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ABSTRACT

These newsletter volumes deal with topics in U.S. history, world history, and U.S. government relating to the Bill of Rights. The newsletters present background information for classroom reading, in some instances provide a list of topical issues, and offer activities for discussion and writing. Some of the topics considered in the newsletters are: political scandals, the National Endowment for the Arts, the Romanovs, the separation of church and state, welfare, the Aztec Empire, origins of Islamic law, the Napoleonic Code, bombing civilians in World War 2, and censoring the Internet. (BT)

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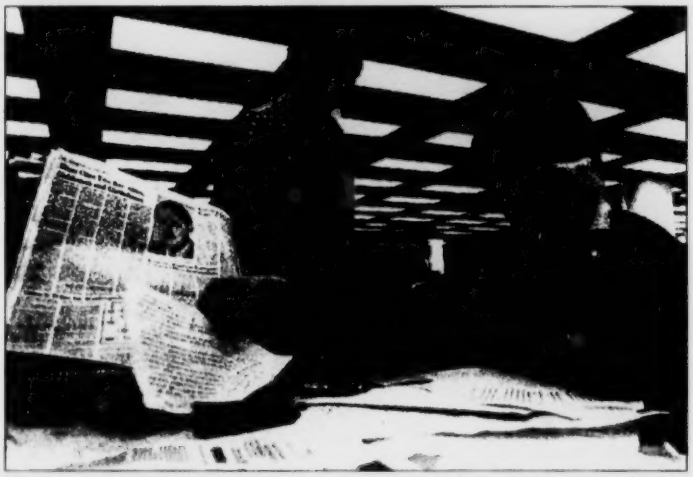
The
BILL OF RIGHTS IN ACTION

CONSTITUTIONAL RIGHTS FOUNDATION

WINTER 1996 VOLUME 13 NUMBER 1

POLITICAL SCANDALS, SCOUNDRELS, AND SCHEMERS:
ARE THE NEWS MEDIA FOCUSING ON THE WRONG THINGS?

• Public distrust of elected officials and political candidates is growing. Media critics say negative press coverage is contributing to this trend and is weakening American democracy. Should journalists change the direction of their reporting?



Washington Post *reporters Robert Woodward (left) and Carl Bernstein broke story after story on the Watergate scandal in 1973–4. Their investigative journalism won them fame and many imitators. (Corbis-Bettmann)*

Many Americans believe politicians are dishonest, hypocritical, and power-hungry. Americans did not always think this way. When John F. Kennedy was president, for example, 75 percent of Americans indicated that they trusted the government to do the right thing. Today that figure has dropped to 25 percent. A recent opinion poll reported that nearly 80 percent of the public gave elected officials in Washington a low rating on honesty and ethics.

U S HISTORY

What has produced this widespread distrust among the American people? Certainly, the Vietnam War and Watergate cover-up ended a long period of public confidence in political leadership. Also, since Watergate, the nation's press has become much more aggressive and negative in its political reporting.

Some media critics, including journalists, argue that the press undermines our democratic system by spending too much time focusing on scandals and portraying public life as little more than a game among scheming politicians. Defenders of the press, however, say that the news media are simply fulfilling their role as watchdogs on the government.

Watergate's Influence

The resignation of President Richard M. Nixon during the Watergate scandal resulted partly from the investigative work of two *Washington Post* reporters, Robert Woodward and Carl Bernstein. Helping to bring down a president made them media stars. They made an impression on a whole generation of journalists.

After Watergate, journalists, especially those covering national news, became more skeptical and wary of politicians manipulating them. The press actively tried to expose government abuses. One consequence of this has been more negative political reporting. While demanding an open and more honest government, reporters sought out the mistakes, inconsistencies, and ethical faults of political leaders.

Historians point out that the press has always been aggressive. Virtually every president, starting with

(Continued on next page)

Election Issue

- Political Scandals, Scoundrels, and Schemers: Are the News Media Focusing on the Wrong Thing?
- Issues in Campaign '96
- TV Attack Ads and the Voter

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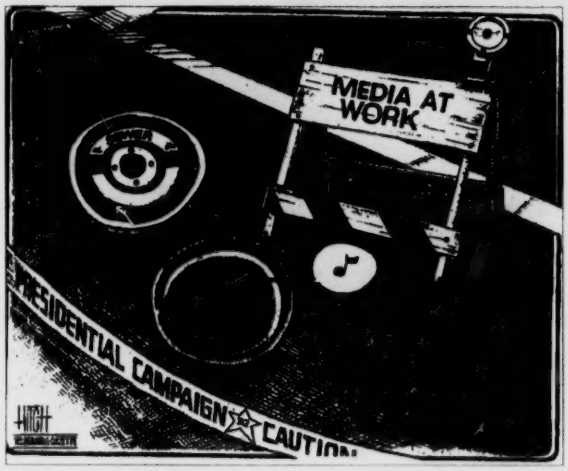
George Washington, has become a target for the press. The tabloid press, which thrives on sensational news reporting, was invented over 100 years ago.

Is Press Coverage Worse Today?

But the aggressiveness of the press is not what concerns today's media critics. They worry about the decline in thoughtful reporting on serious public issues. Often, they say, newspaper and TV news editors cut back on this type of news coverage because it is too boring or lacks the drama of conflict.



Does the media focus too much on negative issues? (Dave Hitch, Telegram & Gazette*)*

Indeed, the media have grown much more competitive in the last 30 years. With today's technology, news can be broadcast around the world as it happens. People expect—and receive—instantaneous reports on assassinations, floods, airplane crashes, even wars. They can receive the information in many new ways—from cable television, satellite dishes, the Internet. Talk radio and tabloid TV news shows, such as "A Current Affair," have grown in popularity. At the same time, fewer people are reading newspapers and watching network TV news. The drop is especially pronounced among people under 30. Trying to keep up with the competition, many newspapers and networks have made their news features shorter and jazzed them up with graphics, pictures, and diagrams. In short, they are trying to make the news more entertaining. Does this mean serious journalism is giving way to sensationalism?

One study of press coverage between 1972 and 1992 revealed that news stories about domestic and foreign questions being considered by Congress dropped significantly. On the other hand, stories about political conflict and ethical misbehavior of elected leaders increased. Senator Alan K. Simpson (R-Wyo.), a strong critic of the media, recently made this remark about reporters covering Congress:

> They don't want to know whether anything was resolved for the betterment of the United States. They want to know who got hammered, who tricked whom. . . . They're not interested in clarity. They're interested in confusion, and controversy and conflict.

Media critics believe the same is true of reporters from the major newspapers and TV networks who cover the White House. In recent years, those on the White House beat have been mostly reporters who covered the president during his election campaign. For the most part, these reporters know how to cover campaign politics—who did what to whom, who's up, who's down. But, say critics, these reporters are not particularly expert in the domestic and foreign policy issues that dominate presidential decision-making. Thus, according to the critics, politics—not policy—tends to color much of their White House reporting. In fact, critics believe serious policy analysis is giving way to covering politics as a horse race.

Defenders of the media believe the critics are overgeneralizing. They admit that some newspapers and networks may cover politics as a horse race. But they cite many examples of in-depth policy coverage. The *New York Times*, *Washington Post*, and *Los Angeles Times* devote much ink to policy issues. Every night on television, "Nightline" explores issues. C-SPAN televises complete speeches and policy forums. The defenders say the best-ever political coverage and reporting is going on today. But, they say, people must seek it out in the highly competitive media.

Should the Media Report on Private Lives?

Another problem critics see in post-Watergate journalism is the greater interest in reporting on the personal lives of politicians. President Franklin D. Roosevelt's legs were paralyzed from polio. He wore leg braces and used a wheelchair. But reporters and photographers never revealed his disability, because they apparently believed it would weaken the president's image as a strong leader. Such a conspiracy of silence by the press would be unthinkable in today's highly competitive news environment.

Scandals and sexual misbehavior have increasingly become acceptable topics for the mainstream press to

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cover. That President John F. Kennedy had affairs with women was not considered newsworthy more than 30 years ago. Today, President Clinton's marital problems while governor of Arkansas continue to be the subject of news media stories.

Larry Sabato, professor of political science at the University of Virginia, has criticized the press for its current tendency to jump quickly into a scandal story. Sabato says that scandals frequently explode into media "feeding frenzies" where every tidbit of gossip is reported. This type of reporting, he says, gives much newspaper space and air time to matters that have little to do with the real problems of the country.

Carl Bernstein, one of the reporters who investigated the Watergate story, wrote recently that "we tell our readers and viewers that the trivial is significant and the lurid or loopy is more important than real news." But William Safire, a columnist for the *New York Times*, takes a different view. He argues that political scandal reporting often contributes to the continuous cleansing of American politics.

The question seems to boil down to what is newsworthy. A president covering up crimes (as in Watergate) is clearly newsworthy. So is any behavior that affects public policy. The debate is over personal behavior that doesn't seem to affect policy. Were Kennedy's affairs newsworthy? Should reporters have revealed them? Do politicians have any right to privacy? Is it right for the news media to withhold information from the public? These questions do not have easy answers. Defenders of the media argue it is better to err on the side of giving the public too much information than too little. Critics say that media scandalmongering is souring people's view of the democratic process.

Campaign Games

Press coverage of political campaigning began to change even before Watergate. Theodore White's book *The Making of the President 1960* and Joe McGinniss's *The Selling of the President 1968* both gave an inside look at how campaigns operate.

Many political reporters soon adopted the new "inside politics" approach by concentrating on the tactics and manipulations involved in campaigning for public office. Press accounts began to depict election campaigns as high stakes games dominated by personality clashes and the political horse race among the candidates. The press, say critics, often ignored the voters and the issues.

Critics say reporting election campaigns as only a game often resulted in candidates coming across in a negative light. A study of major newsmagazine coverage of the 1992 presidential campaign showed that references to Bush and Clinton were 60-percent negative. A similar study of TV network news shows during the Republican primaries in 1996 indicated that campaign news stories were 3-to-1 negative.

"There can be no doubt that the change in the tone of election coverage," says Syracuse University political scientist Thomas Patterson, "has contributed to the decline in the public confidence in those who seek the presidency."

Journalists defend their coverage of political tactics and manipulation. Every campaign employs "spin doctors," whose job is to manipulate the media. The press, they say, is merely exposing "the man behind the curtain," the manipulators of the press. Many journalists argue that knowledge of campaign tactics makes citizens more sophisticated and informed.

Virtually every president, starting with George Washington, has become a target for the press.

Sound Bites

Media critics believe it's difficult for citizens to stay informed when candidate reporting is reduced to fragmentary "sound bites." A sound bite is a recorded segment of uninterrupted speech. In 1968, the average presidential candidate sound bite on network evening news programs lasted 42 seconds. By the 1992 election, the average sound bite time had been pared down to 7.3 seconds.

While the candidates have been talking less on TV news, political reporters have been saying more. In 1992, TV reporter comments took 72 percent of election coverage. Typically, a TV reporter tells a news story using sound bites to illustrate his or her points and then often ends with an interpretation of what the candidate is saying and doing. This kind of reporting is more lively and interesting to the viewer. But critics say sound bites keep citizens from judging the actual words and views of the candidates themselves.

Changes in Political Reporting

During the last few years, media critics have called for significant changes in how the news, especially political news, is reported. They want:

- more emphasis on the nation's real problems and possible solutions and less on political conflict;
- more of what candidates are saying and less on reporters analyzing the campaign horse race; and
- more on how politicians intend to improve America and less on their personal lives.

Some journalists have attempted to change reporting by creating a movement called public (or civic) journalism. Public journalism places much emphasis on finding out what problems matter the most to people and then helping them work out solutions.

So far, public journalists have been experimenting mainly at the local newspaper level. Davis "Buzz" Merritt, editor of the *Wichita* (Kansas) *Eagle* and one of the founders of public journalism, launched "The People Project: Solving It Ourselves" in 1992. This, like other public journalism projects throughout the country, involved a series of articles dealing with city problems and solutions based on the experiences and ideas of Wichita citizens. The thing that made this different from traditional reporting was that the newspaper played an activist role in organizing public forums where citizens had the opportunity to struggle with the problems facing their community.

An example of this new approach is PBS's "Democracy Project," which will devote 100 hours of prime time during the 1996 presidential election campaign "listening to people rather than to talking heads, Washington experts, [and] politicians." You can follow the "Democracy Project" on the Internet (http://www.pbs.org/democracy/).

Traditional journalists resist participating in efforts that try to influence the way our political system works. Instead, these journalists prefer to play the role of public watchdog, reporting the news as it happens in a detached and objective way. As "60 Minutes" senior correspondent Mike Wallace puts it, "our job is to report, to explain, to illuminate." Reporters like Wallace believe that setting up undertakings like the "Democracy Project" moves the press from reporting the news to helping to make it. If this happens, journalist objectivity may suffer.

David Broder, a well-respected reporter for the *Washington Post*, speaks for those who want to change political reporting. He worries that "it will be written at some future point about my generation of political reporters that we covered everything, but we didn't notice that support for representative government and democracy was collapsing."

For Discussion and Writing

1. Many journalists say they do not give a negative slant to their reporting; all they do is report reality. Do you agree or disagree with this view? Why?
2. Do you think it's important for citizens to understand political tactics in a campaign? Do you think the media overemphasizes tactics? Explain.
3. What do the news media and the public have a right to know about the personal lives of elected officials and political candidates? What do they not have a right to know? Explain your answer.
4. What is public journalism? Do you think it's a good idea? Why or why not?

A C T I V I T Y

Evaluating TV Election News

Form small groups to evaluate one day's TV news coverage of the 1996 presidential campaign. Assign each group different programs on the same day. Each group should complete the tasks below, report back, and the class should discuss which news source had the best campaign coverage.

Task 1: Time the minutes the news program allots to each presidential candidate's campaign activities for the day. What was total coverage?

Task 2: During the program's election coverage, record the time each of the following types of persons speaks: **news anchor**, **candidate**, **political expert**, **reporter**, **citizen**, or **other**. Which type person spoke the most?

Task 3: Record the seconds of each sound bite (uninterrupted statement) by a presidential candidate. What was the total for each?

Task 4: Decide (1) What was the program's main focus—issues or campaign tactics? (2) Who spoke the most—candidates and voters or reporters and political experts?

ISSUES IN CAMPAIGN '96

- **This article includes background information and arguments on four important issues that the presidential candidates will be discussing.**

Issue: Affirmative Action

Broadly defined, affirmative action refers to any steps taken to increase the number of minority persons and women who are hired, promoted, admitted to college, or awarded government contracts. Affirmative action began in the 1960s and 1970s as an attempt to bring African Americans, other minorities, and women more fully into the mainstream of American life. These groups historically had been victims of discrimination, which blocked them from certain jobs, professions, universities, and other opportunities. Affirmative action was viewed as a way to undo the injustices of the past.

Quotas, reserving a specific number of places for a particular group, are illegal. But starting in the 1970s in the Nixon administration, federal laws pressured employers to develop affirmative action plans designed to seek, hire, and promote qualified minority and woman workers. These efforts were eventually expanded to university admissions and government contracting.

In reaching out to bring more minorities and women into the mainstream, affirmative action programs sometimes alienated other groups, notably white males. Members of these groups charged that affirmative action was using race and gender to discriminate against them, something which they called "reverse discrimination."

Recent Supreme Court decisions have severely restricted, but not outlawed, government-sponsored affirmative action programs. A closely decided case in 1995 held that government affirmative action based on race is unconstitutional unless it was established for "the most compelling reasons." In the meantime, Congress and the states are debating whether affirmative action has outlived its original purposes and should be abolished.

U S GOVERNMENT

Issue Question: Do we still need affirmative for minorities and women?	
YES	**NO**
1. Affirmative action provides equal opportunities for minorities and women who have long been the victims of discrimination.	1. Ability and test scores, not race and gender, should determine who gets ahead in our society.
2. So-called "reverse discrimination" is rare. Affirmative action simply means that all qualified persons get to compete, whereas in the past minorities and women were often excluded.	2. By using racial and gender categories, affirmative action often promotes middle-class minorities and women over disadvantaged non-minorities. Government programs should help **disadvantaged individuals** regardless of race or gender.
3. Affirmative action is still needed since minorities and women have yet to catch up with other groups in the rate of employment, earnings, and promotions due to the discrimination of the past.	3. Affirmative action causes many people to falsely conclude that minorities and women are not capable of competing in society on their own. This unfortunate attitude harms the very people affirmative action seeks to help.
4. Our society has never been, and is not now, a "color-blind society." Today, 70 percent of Americans do not think we are close to eliminating discrimination.	4. Ours should be a "color-blind society." Affirmative action simply uses a different form of discrimination to undo the injustices of past discrimination. Both are wrong.

Issue: Illegal Immigration

An estimated 300,000 persons illegally enter the United States each year. The Immigration and Naturalization Service believes that there are about 4-million immigrants currently in the United States without proper documentation.

Congress passed an immigration law in 1986 that fined employers for hiring illegal immigrants. But the law was not strictly enforced. As a result, this legislation failed to stop the surge of illegal immigration that occurred in the 1990s.

Current law requires states to provide emergency medical care and public schooling for all residents, legal or illegal. In 1982, the Supreme Court struck down a Texas law that excluded the children of undocumented aliens from the public schools. A 5–4 majority ruled that the equal protection clause of the 14th Amendment covers all "persons" living in the country.

In 1994, California voters approved a ballot proposition that included a provision denying free public education to the children of illegal immigrants. This proposition is currently being challenged in the courts. Meanwhile, Congress is debating a measure that would allow the states to deny public schooling to illegal immigrant children.

Issue: Federal Tax Cut

In 1962, President John F. Kennedy, a Democrat, said that the best way to raise more tax revenue for the government was to cut taxes. He argued that cutting taxes would mean more cash in the hands of individuals and businesses who would then make more purchases and investments. This, in turn, would cause the economy to grow along with a resulting increase in tax payments as more people became employed. This theory is called "supply-side economics."

Kennedy's supply side view worked in the 1960s. Tax rates were cut and tax revenues went up by 16 percent in four years due mainly to economic growth.

In the early 1980s, President Ronald Reagan, a Republican, also promoted the supply-side theory of a tax cut to spur economic growth. But this time something very different happened. After income taxes were slashed by 30 percent over three years, and

Issue Question: Should states be permitted to deny free public schooling to the children of illegal immigrants?

YES	NO
1. Free social benefits like public schooling serve as a magnet helping to draw illegal immigrants into the country.	1. People enter this country illegally to find work. It is these workers and their American employers who should be punished, not innocent children.
2. Requiring states to provide a free public education to illegal immigrant children is unfair to citizen-taxpayers.	2. Illegal immigrants as well as citizens pay taxes that go to public education.
3. Spending education money on the children of illegal immigrants prevents states from using those funds for the benefit of students who are citizens or are here legally.	3. Kicking illegal immigrant children out of school and onto the streets would only lead to increases in child neglect, juvenile crime, and drug problems.
4. The 1982 Supreme Court decision requiring the public education of illegal immigrant children was decided by only one vote and is likely to be overturned by today's high court.	4. The 1982 Supreme Court decision was correct. We don't know what today's court will decide. But it's bad policy to turn children away from public schools.
5. Teachers would not be involved in determining who is an illegal immigrant. This would be a part of the school registration process.	5. Finding illegal immigrants should be the job of federal officials, not school teachers and administrators who would be forced to question "suspect" students.

Issue Question: Should federal taxes be cut to stimulate economic growth?	
YES	**NO**
1. High taxes today are like a dead weight on the economy, preventing job creation and significant economic growth. A tax cut will spur the economy and bring in more tax revenues.	1. Employment is up, inflation is down, and the budget deficit has fallen 60 percent since 1992. A tax cut now will only lead to more inflation, higher interest rates, a weakened economy, and a return to the huge budget deficits of the 1980s.
2. The tax cut boosted the federal budget deficit in the 1980s because of a recession and the refusal of the Democrat-controlled Congress to cut government spending. Today, lower taxes and cutbacks in many government programs will lead to a boom in the economy, increased tax revenues, and a balanced federal budget by 2002.	2. To balance the federal budget by 2002, tax cuts would have to be offset by cuts in large government programs like Medicare and Social Security. Most Americans do not want to do this.
3. Cutting taxes gives the American taxpayer, rather than the government, more power to decide how to spend hard-earned family income.	3. Most tax cut proposals would benefit the wealthy much more than the middle class and the poor.
4. Recent major tax and spending cuts in states like New Jersey and Wisconsin have led to more jobs and booming economies.	4. Our economy is strong. It is better to continue reducing the budget deficit than to go for a tax cut now.

the capital gains tax on profits from the sale of investments was also reduced, tax revenues did not increase enough to match federal government spending, particularly defense spending. In fact, spending far outstripped tax revenues, causing the annual government budget deficit to explode. This deficit had to be made up by borrowing the difference. The resulting national debt reached almost $5 trillion by the early 1990s.

In 1993, President Bill Clinton and a Democrat-controlled Congress started to reduce the yearly deficit by cutting some spending and raising taxes, particularly on people with higher incomes. When the Republicans gained control of both houses of Congress in 1994, they once again pushed the idea of federal income and capital gains tax cuts to stimulate economic growth.

Issue: National Missile Defense

In 1972, the United States and the Soviet Union agreed not to build any nation-wide defense system to protect their homelands from nuclear missile attack. The purpose of this agreement, known as the Anti-Ballistic Missile (ABM) Treaty, was to prevent a new expensive missile race to overcome such a defense system.

Despite the ABM Treaty, President Ronald Reagan in the 1980s backed the development of a space-based defensive weapons system that would protect the United States against any missile attack. This Strategic Defense Initiative (also popularly called "Star Wars") mainly concentrated on scientific research and development costing $35 billion over a 10-year period. This large-scale effort was abandoned after the break-up of the Soviet Union and the end of the Cold War.

Today, so-called "rogue nations" like North Korea and Iran are trying to develop their own nuclear missiles thus posing a threat to the United States in the future. The Pentagon is currently spending about $3 billion a year on technological research and development for a "thin" National Missile Defense. This would protect against a small number of missiles launched by a "rogue nation," but not a massive attack as was envisioned in President Reagan's "Star Wars" program.

Seeing no immediate missile threat to the United States for another 10 years or more, defense planners have recommended that a decision to actually establish an anti-missile system can be delayed for three

Issue Question: Should the United States build a "thin" National Missile Defense as soon as possible?	
YES	**NO**
1. Hundreds of nuclear missiles are still operational within the territory of the former Soviet Union. While the Cold War is over, these missiles could still be launched accidentally or by persons without the authorization of their government.	1. Defense experts say that if we decide now to go ahead with the construction of a National Missile Defense, it will end up being less effective than if we invest in research over the next three years.
2. A National Missile Defense is especially needed to protect the United States from attacks by "rogue nations" with terrorist aims.	2. Nations who want to terrorize the United States are much more likely to use weapons like truck bombs than costly and hard to develop long-range missiles.
3. The 1972 ABM Treaty does not fit today's world and should be renegotiated with the Russians or ignored by the United States.	3. Deciding to build a National Missile Defense as soon as possible would be a direct violation of the ABM Treaty. This would also put at risk nuclear arms reduction treaties with the Russians.
4. The most important purpose of the federal government is to protect the nation from foreign attack at any cost.	4. Building a National Missile Defense now will be very costly and will take away funds required for education, environmental protection, deficit reduction, and other national needs.

years while research continues. In 1999, if events warrant it, the technology will be available to put into place the "thin" missile defense system by 2003 at a cost of $5 billion. Some critics of this Pentagon plan argue that the decision to start building the system should be made now well in advance of any future threat. This option would cost about $10 billion.

For Discussion and Writing

1. Rank the four issues discussed in the article from the most to least important to you. Explain why the issue you ranked first is the most important.
2. Find out how the presidential candidates would answer each of the issue questions.
3. What other issues should the candidates be discussing with the voters?

For Further Research

Vote Smart Website. URL: http://www.vote-smart.org [this site provides Internet links to sources on many Campaign '96 issues].

ACTIVITY

Taking A Stand On The Issues

A. Meet in small discussion. Each group should select one of the four issues. Then each should complete the following issue evaluation tasks:

   1. What is the best argument on each side of your issue?
   2. Make a list of the advantages and disadvantages of adopting the policy proposed.

B. Meet as a class to discuss each issue question. Have each group report back its findings. After discussing each question, take a class vote on it.

TV ATTACK ADS AND THE VOTER

- **Political advertising on television has become increasingly negative. Is this bad for democracy?**

Consider these two excerpts from 1996 Dole and Clinton TV political ads:

"Pledge"

Clinton: "I will not raise taxes on the middle class."

Announcer: "We heard that a lot. Six months later he gave us the largest tax increase in history. . . ."

"Hold"

Announcer: "The same old politics—Dole attacks Clinton. Hold it. . . . Dole voted to raise payroll taxes, social security taxes. . . $900 billion in higher taxes.

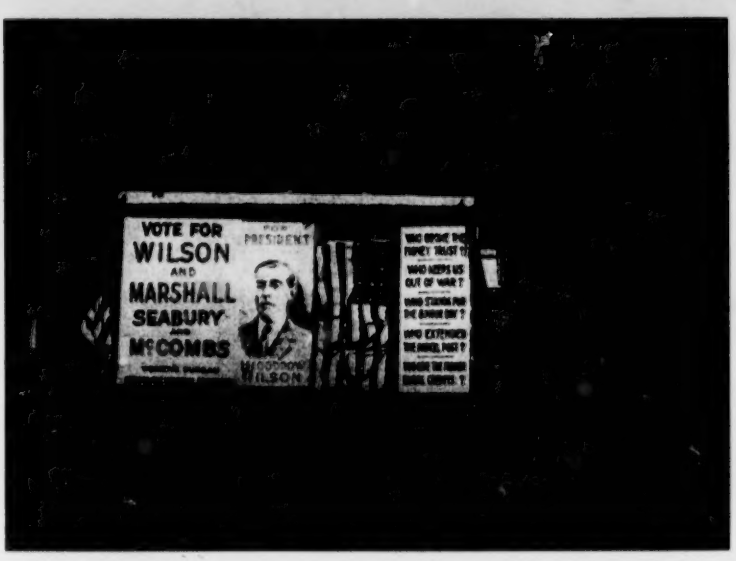
Dole: "You're going to see the real Bob Dole from now on."

Announcer: "The real Bob Dole, 35 years of higher taxes."

Both ads are examples of negative political advertising, which attempts to persuade citizens to vote for one candidate by attacking the opponent's character or views. All this happens with a minimum of words in about 30 seconds.

Of course, negative political campaigning in the United States is as old as the country itself. The election of 1800 between John Adams and Thomas Jefferson, for example, was one of the most negative in our history. Although the candidates themselves remained above the fray, their supporters spewed venom. Adams was denounced as a traitor to the American Revolution who wanted to install himself as king. Jefferson was attacked as an anti-Christian, adulterer, and dangerous radical whose election would lead to a reign of terror.

Today's attack ads on television may seem mild in comparison. But they have added a new dimension to the election process. Some worry that the increasingly negative 30-second political TV "spots" provide the only information that many people use in deciding how to vote—or even whether to vote at all.



Political advertising has changed a lot since the campaign of 1916, which was before commercial radio and television. (Corbis-Bettmann)

From Ike to "Willie" Horton

The first political advertisements for a television audience appeared in 1952 as part of General Dwight D. Eisenhower's Republican presidential campaign against Democrat Adlai Stevenson. Eisenhower (often called "Ike") filmed 40 TV spots in a New York City studio during a single day. For each ad, he simply faced the camera and read from scripted cue cards. Tourists visiting New York were then recruited to be filmed asking Ike questions. The questions and Ike's answers were edited together along with an announcer's voice over. Eisenhower won by a landslide. He probably would have beaten Stevenson even without the TV spots. But after 1952, American political campaigning would never be the same.

In the 1956 election rematch between Eisenhower and Stevenson, TV campaigning took a negative turn when the Democrats used the first TV attack ads against Ike's running mate, Vice President Richard M. Nixon. Playing on voters' fears about the health of Eisenhower, who had recently suffered a heart attack, the Democrats produced a TV spot in which an announcer asked, "Nervous about Nixon? *President* Nixon?" From this time on, both major political parties have increasingly resorted to negative TV spots to attack each other.

The most famous TV attack ad took place during the 1964 contest between the incumbent Democratic president, Lyndon Johnson, and Republican Senator Barry Goldwater. Goldwater had the habit of making provocative "shoot-from-the-hip" remarks like the one in which he said that the United States could lob nuclear missiles into the men's room of the communist leaders in Moscow.

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Building on Goldwater's well-known hawkish views, Democratic campaign strategists developed a devastating attack ad, which did not even name the Republican candidate.

The TV spot began with the camera on a little girl alone in a field counting, "One, two, three. . . ," as she picks petals off a daisy. The little girl looks up startled as the camera moves to her face and eye until the screen goes black. A man's voice is then heard counting, "Ten, nine, eight. . .," until a nuclear bomb is shown exploding. As the bomb blossoms into its mushroom shape, President Johnson speaks: "These are the stakes—to make a world in which all of God's children can live, or to go into the dark. We must either love each other, or we must die."

The obvious implication was that if Goldwater were to become president, he would start a nuclear war. Known as "Daisy," this spot was aired one time by the Democratic Party (although it appeared a number of other times on news programs). Outraged, the Republicans threatened to sue for libel.

What effect do attack ads have on democracy?. . . A recent academic study on this revealed that negative political advertising reinforces the view that the political system is corrupt and all politicians are crooks.

By all accounts, the nastiest TV political ad campaign in recent times occurred during the 1988 presidential race between Vice President George Bush and Michael Dukakis, the governor of Massachusetts. Early in the campaign, Bush trailed Dukakis in the polls. Republican strategists decided to attack Dukakis on emotional issues such as crime. A pro-Bush political action committee financed the most effective attack ad, which centered on the story of one criminal.

William Horton, an African-American, had been sentenced to prison in Massachusetts for killing a person during a robbery. Under a state furlough program, Horton was allowed to spend 48 hours outside of prison. Horton violated the conditions of his furlough, raped a white woman, and assaulted her boyfriend.

The TV ad developed by the political action committee contrasted the positions on the death penalty held by Bush (for) and Dukakis (against). The ad further charged that, "Dukakis not only opposes the death penalty, he allowed first-degree murderers to have weekend passes from prison." A black-and-white mug shot of "Willie" Horton then appeared on the TV screen. After relating Horton's crimes against his two white victims, the spot ended by showing an unflattering photo of Dukakis with the caption, "Weekend prison passes. Dukakis on crime."

Nothing was really untruthful about this TV spot, but a great deal was left unsaid. The Massachusetts prison furlough program had been created by the previous Republican governor, not Dukakis. Also, most other states as well as the federal government operated successful furlough programs. Finally, many accused the ad-makers of intentionally selecting a black criminal for the spot to stir up racial fears and prejudice among white voters.

Attack Ads and Democracy

The majority of TV spots shown during presidential election campaigns still tend to be positive, showing what a candidate stands for and why people should vote for him. But campaign media specialists like to "go negative." Negative ads stick in people's memories. They take advantage of the tendency of people nowadays to vote against rather than for someone. Most importantly, these ads seem to work.

What effect do attack ads have on democracy? The most recent academic study on this question revealed that negative political advertising reinforces the view that the political system is corrupt and all politicians are crooks. The study also showed that up to 5 percent of the voters are so turned off by negative ads that they decide not to vote. These tend to be mostly moderate and independent voters. Thus, attack ads may be driving many moderate voters away from the polls.

Should anything be done about attack ads? First of all, the First Amendment to the U.S. Constitution protects all political speech. So attack ads cannot be outlawed. Further, many argue that they are part of the rough-and-tumble democratic process. They may even have value if they are truthful and point out flaws in candidates or their positions.

Since 1990, some newspapers and TV stations have started analyzing the truthfulness of campaign spots. In their political coverage, they have included an "Ad Watch" feature, which analyzes the factual content of TV campaign spots and reports any that are inaccurate or misleading. According to a number of campaign media consultants, the Ad Watch effort forced them to be more careful about their TV spot attacks. Ad Watch

does seem to have the potential for reducing inaccuracy, deception, and negativity in political advertising.

More importantly, citizens must learn to view 30-second TV spots more critically to see if they contain useful information. And citizens must depend on more than these spots to judge the candidates.

For Discussion and Writing

1. What is a negative political ad?
2. Are TV attack ads bad for democracy? Why or why not?
3. Some people argue that attack ads would tend to disappear if candidates were required to appear in their ads themselves, speaking on their own behalf like Eisenhower did in 1952. Others say that this would mainly hurt challengers who need more aggressive ads in order to unseat incumbents. What do you think?

For Further Reading

Diamond, Edwin and Bates, Stephen. *The Spot, The Rise of Political Advertising on Television*. Cambridge, Mass.: MIT Press, 1984.

Jamieson, Kathleen Hall. *Dirty Politics, Deception, Distraction, and Democracy*. New York: Oxford University Press, 1992.

A C T I V I T Y

The Spot

In this activity, students examine and create ads for presidential candidates. Students should repeat the activity for federal, state, and local candidates.

A. Students should view at least one Clinton and one Dole ad on television. This may be assigned as homework, but it is recommended that the teacher tape Clinton and Dole spots to show the entire class. After viewing each spot, the students should meet in small groups and answer the evaluation questions listed below. The class as a whole should then discuss the answers to each question.

TV Spot Evaluation Questions

1. For which candidate was the spot produced?
2. Name any specific campaign issues mentioned in the spot.
3. Does the spot appeal to voter feelings like patriotism, optimism, sympathy, trust, distrust, selfishness, fear, anger, or prejudice? How?
4. Explain any political slogans that appear in the spot.
5. Identify and explain the meaning of any symbols (like the American flag) that appear in the spot.
6. Describe any noticeable or unusual use of photography, music, graphics, or special effects in the spot.
7. Is this a positive or negative spot? How do you know?
8. What is the main message that the spot is trying to get across to the voters?
9. Does the spot provide useful information to the voter? Explain.
10. Are you convinced by this spot? Why or why not?

B. After the class has evaluated real Clinton and Dole TV spots, the students should meet in small "media consulting" groups. Each group will write a 30-second script for Clinton or Dole. Each group will then role-play its spot before the class.

C. After performing their role plays, the students should discuss these questions:

1. Which spot was the most memorable?
2. Which spot contained the most useful information?
3. Which spot was the most convincing?

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The Battle Over the National Endowment for the Arts

In 1990, hundreds rallied in front of the Capitol favoring greater support of the NEA and opposing content restrictions on artists funded by the NEA. (Corbis-Bettmann)

U.S. GOVERNMENT

The National Endowment for the Arts (NEA) has recently been the focus of intense controversy. Founded just over 30 years ago, the NEA is a federal agency that funds art organizations and programs throughout the country. Most of its money goes to fund art museums, symphonies, established theaters, state and local arts organizations, and art education programs. About 4 percent of its budget used to be given in grants to individual artists. Most criticism of the NEA focuses on its funding of individual artists and displays of their works. Critics often cite as particularly outrageous NEA funding for a museum display of Robert Mapplethorpe's graphic photographs of homosexual acts, NEA funding to an arts organization that gave funds for a display of Andres Serrano's sacrilegious photograph of a crucifix, and direct NEA grants to Karen Finley, whose performance art has featured her smearing her nude body with chocolate.

Many Americans are outraged that their tax dollars have helped support work that they consider obscene or sacrilegious. They argue that NEA funding favors an elite group of artists who are alienated from mainstream American culture. They demand that the NEA be eliminated.

Many others, however, argue that the arts, even controversial works of art, are vital to the flourishing of a rich national culture and a free society. Recent polls indicate that a majority of Americans favor public support of the arts.

History of Art Funding in America

Although other nations in the developed world have long traditions of government funding for the arts, the United States does not. Symphony orchestras, museums, and individual artists have depended for support on donations from corporations and private foundations. Presidents Buchanan (in 1859), Harrison (in 1891), and Theodore Roosevelt (in 1901) tried to establish a

(Continued on next page)

Controversies in the Arts

This edition of *Bill of Rights in Action* focuses various controversies surrounding art—ranging from Nazi Germany's suppression of modern art to modern controversies about the National Endowment of the Arts and popular music lyrics.

- **U.S. Government:** The Battle Over the National Endowment for the Arts
- **World History:** The Suppression of Art in Nazi Germany
- **U.S. History:** Music on Trial: Rock, Rap, and Responsibility

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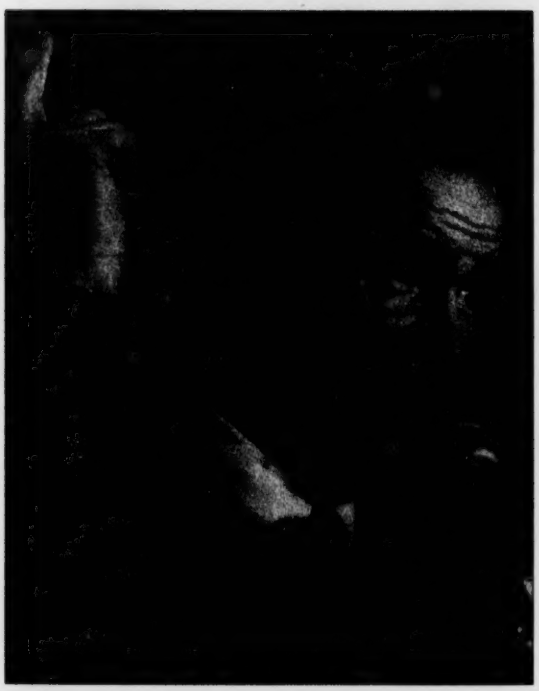
national council on the arts. Their proposals failed. The first major government funding of the arts didn't occur until the 1930s during the Great Depression. The Works Progress Administration (WPA) hired thousands of writers, musicians, painters, sculptures, and other artists to work on public art projects. But the WPA was viewed as a relief project—one that provided employment. In 1939, Congress ended the WPA's art projects.

The Development of the NEA

It wasn't until 1964 that the National Endowment for the Arts was conceived as part of President Lyndon Johnson's "Great Society." Along with a war on poverty, new education programs, and increased care for the elderly, the Great Society would, Johnson proclaimed, provide money and expertise to "encourage the development and growth of the arts throughout the nation." In 1965, Congress created the National Endowment for the Arts. Its mission was to "foster the excellence, diversity, and vitality of the arts in the United States."



In the 1992 Republican primary, presidential candidate Patrick Buchanan criticized President Bush for supporting the NEA. (Corbis-Bettmann)

To judge artistic excellence, diversity, and vitality, the NEA established "peer panels," appointed by the NEA chairperson. According to federal legislation, the approximately 800 members of the different panels must have shown expertise and leadership in the type of art they are reviewing. They must also be diverse geographically, culturally, and in points of view. All decisions of the peer panels are reviewed by the National Council of the Arts, a 26-member committee appointed by the president. The council then recommends grant finalists to the NEA chairperson, who makes the final decision on all grants.

For many years, the NEA had bipartisan support. The Johnson administration, moving deeper and deeper into the Vietnam quagmire, lost interest in building up the NEA. During the Nixon and Ford administrations, however, the NEA's budget grew tenfold. The Carter and Reagan administrations continued supporting the NEA.

From the NEA's founding, there had always been critics. But in 1989, a storm of criticism fell on the NEA in the wake of Mapplethorpe, Serrano, and Finley. Congress responded by passing a law in 1990 requiring that the agency only fund works that meet "general standards of decency and respect for the diverse beliefs and values of the American public." This law was the first content restriction that Congress had ever placed on the NEA.

The NEA chairperson immediately turned down four grant requests that had been recommended for approval. The four artists (one was Finley) sued the NEA, and in 1992 a federal judge ruled that the decency requirement was unconstitutional. In November 1996, an appeals court voted 2–1 to uphold this ruling. The two-judge majority said that the law was vague and would allow the NEA to refuse funding "because of the artist's political or social message or because the art or artist is too controversial." The dissenting judge said the law was no more vague than "artistic excellence," a long-time NEA standard. The Clinton administration has appealed this decision.

Following the uproar over these artists, more people in public life started to question the NEA. In the 1992 Republican primary, Patrick Buchanan attacked President Bush for supporting the NEA. After the 1994 congressional elections, the new Republican majorities in both houses slashed the NEA's budget 40 percent—from $170 million to $99 million. (Its budget constitutes about a tenth of 1 percent of the federal budget.) Jane Alexander, the current head of the NEA, stopped all grants to individual artists. But more voices in Congress have called for an end to the NEA.

Pros and Cons of the NEA

Many NEA opponents don't think taxpayers should fund outrageous art. House Speaker Newt Gingrich (R-Georgia) proclaimed: "I don't think there's an automatic right to coerce the taxpayer so we can finance people to do weird things." Critics like Patrick Buchanan and Senator Jesse Helms contend that taxpayers unwillingly subsidize obscene and blasphemous art, forced upon them by an out-of-touch cultural elite.

Gene Veith, a Wisconsin arts administrator, agrees that elitism is a problem. He writes that "artists no longer have to create works that appeal to the public. They have to create works that appeal to the grants makers." This problem, he contends, "is multiplied in its effect when state governments, corporations, and even private buyers...defer to the same [NEA] peer-review panels."

The problem of how to recognize quality art has troubled many. Stephen Weil, of Washington's Smithsonian Institution has written: "Few issues, in fact, have so deeply or bitterly divided the art world...as has this question of quality. Is there really any such thing, its detractors ask, or is it simply an exclusionary device, an instrument of cultural repression...?"

According to Jeff Jacoby, columnist for *The Boston Globe*: "The NEA consistently rewards novelty over quality. Its grant recipients are often distinguished by...intolerance toward traditional standards and art forms. Artistry, beauty, and craftsmanship are rejected in favor of radical politics, victim chic and anger." In short, these critics repeat the objection that public arts funding favors a small, elite group of artists and connoisseurs.

NEA supporters believe the critics distort the NEA's record. On the NEA's 30th anniversary, Senator Claiborne Pell (D-Rhode Island), one of its original sponsors, said that the NEA:

> provides critical assistance for ... music, theater, literature, dance, design arts, and folk arts around the country. This year, in my own state of Rhode Island, the Endowment provided funds to renovate painting and sculpture facilities in the Museum of Art at the Rhode Island School of Design, supported an after-school arts education program for minority neighborhood youth in the fourth and fifth grades, and funded the Trinity Repertory Theater, one of the nation's premier theaters. In other areas, the NEA funded a Music in our Schools program in Providence and aided a folk arts apprenticeship program. Without this funding...many of these programs would simply not exist.

NEA supporters further point out that only a handful of the more than 100,000 NEA grants have proven controversial. Robert Hughes, art columnist for *Time* magazine, says: "You don't kill the endowment over that, any more than you abolish the U.S. Navy because of Tailhook" [a Navy scandal].

Many Americans express outrage that their tax dollars have helped support work that they consider obscene or sacrilegious.

NEA supporters maintain that the NEA should not shy away from controversial pieces of art. They explain that many great new works of art have provoked controversy. In 1913, a Parisian audience rioted at the premiere of Igor Stravinsky's "Rite of Spring." When Maya Lin's design for the Vietnam Memorial was announced in 1981, many veterans' groups expressed outrage over a work that they believed insulted those who died. Today, both of these works are widely recognized as powerful works of art.

NEA supporters claim that our nation's culture is enriched by serious art work, which will never enjoy support by the marketplace.

In contrast, some NEA opponents apply a "survival of the fittest" philosophy to the arts. If an arts program can only survive on government money, they contend, perhaps it shouldn't exist at all. If artists have something of value to offer society, they argue, then people will buy their paintings, books, or recordings, or go to the theater to view their plays and movies.

Opponents point out that, without the NEA, the arts will not die in America. "In fact," insists *The Globe*'s Jacoby, "the NEA-is-indispensable argument is worse than preposterous. It is deeply insulting to the

nation's real arts benefactors: the individuals, corporations, and foundations that contributed nearly $9.5 billion last year to sustain the arts and humanities. In 1994, private giving to the arts dwarfed the NEA budget by a ratio of 57 to 1."

NEA supporters recognize that killing the NEA will not kill the arts. But, they maintain, it will deal a severe blow to many communities that cannot support museums, theaters, symphonies, and arts education. They realize that corporations and foundations do most of the giving. (They put the ratio at 12–1.) But, they assert, critics fail to understand that many of these organizations would not be as generous without NEA matching grants—money that must be matched by other donors. NEA money, they state, serves to prime the pump. For every dollar it gives, many more private dollars follow.

Much of the argument between the two sides boils down to one question: Is it proper for government to subsidize the arts?

In fact, they claim that the NEA's small investment in arts pays huge dividends. They cite studies showing that each year the non-profit arts sector generates billions of dollars for the economy, creates more than a million jobs, and pays back any federal subsidies by returning billions of dollars in taxes. In addition, federally funded arts projects help rejuvenate business districts and lure tourists and shoppers to cultural centers.

Much of the argument between the two sides boils down to one question: Is it proper for government to subsidize the arts? Many NEA opponents argue that support for the arts is not the business of government. Jacoby of *The Globe* asserts: "In America, the state is expected to keep out of the marketplace of ideas. If it is wrong for government to censor a work of art, it is just as wrong for government to subsidize one." But NEA supporters ask: If this is so, where would you draw the line? Should we close the Smithsonian? Should we sell the Vietnam Memorial? Could no government—local, state, or federal—give any money to a museum? NEA supporters say that supporting the arts is a necessary and proper function of government.

For Discussion

1. How do the arts get funding in the United States?
2. Do you think the arts contribute to American society? Why or why not?
3. Do you think the NEA should be involved in funding the arts in the United States? Why or why not?

A C T I V I T Y

What Should Be Done About the NEA?

In this small-group activity, students role play members of a Congressional committee deciding what to do about the NEA.

1. Form small groups.
2. In your group, discuss each of the options for the NEA below. Decide which option (or options) your group believes is best for the NEA. You may develop options of your own. Be prepared to report your decisions and reasons for them to the rest of the class. If your group cannot agree, report back the majority and minority positions.
3. After each group reports, hold a discussion and class vote.

Options for the NEA

1. Abolish it.
2. Remove all content restrictions.
3. Permit it only to fund arts organizations like museums and symphonies—not individual artists.
4. Keep it at its current budget.
5. Increase its budget.

The Suppression of Art in Nazi Germany

In 1937, the government of Nazi Germany held two bizarre art exhibits in Munich. The "Great German Art" exhibition opened in the new House of German Art, which was built to look like a huge Greek temple. This exhibit was launched with a rousing speech by Nazi leader Adolf Hitler and a lavish parade with people dressed as Greek gods and goddesses. The exhibit housed what the Nazis proclaimed as the best art in Nazi Germany. They believed this art showed that Third Reich could produce art that rivaled the ancient Greeks.

Nazi leader Adolf Hitler (right) and his propaganda minister Joseph Goebbels (left) tour the Great German Art exhibition in 1937. (Corbis-Bettmann)

A few hundred yards away, the Nazis held the second exhibit in a small building. In nine rooms, they crammed nearly 700 paintings and sculptures created by German artists. On the walls, they scrawled words insulting the works. This exhibit housed what they called "Degenerate Art," art that the Nazis believed was harmful and repugnant. Modern, or avant-garde, art filled these rooms. The exhibit was meant to hold modern art up to public ridicule.

The Nazis placed the two exhibits near each other so people could compare them. The Great German Art exhibit showed the kind of art approved of by the Nazi state. The Degenerate Art exhibit showed the kind of art that the Nazi state prohibited. The exhibits were part of an incredible Nazi campaign to put art under control of the state.

WORLD HISTORY

Art in the Weimar Republic

Prior to the Nazi takeover in 1933, German art had exploded into a dizzying array of styles. Although some artists still painted in the realistic style common in the 19th century, many experimented with new forms. They followed the lead of Impressionists and Post-Impressionists who had broken away from realistic-style painting. Cubists structured their paintings along geometrical forms. Expressionists distorted forms to express inner feelings. Dadaists created abstract, fantastic works that mocked everything—even other modern artists.

Berlin was challenging Paris as capital of the art world. Germany attracted such prominent artists as Wassily Kandinsky and Paul Klee. Art magazines sprouted up everywhere debating the merits of different artists and art forms. The Bauhaus opened. This was a school of modern art and architecture that would become internationally famous. The National Gallery in Berlin opened a wing devoted to modern art, which housed major works by German painters like Max Beckman as well as foreign artists like Pablo Picasso.

All this was taking place amidst the chaos in German society. Following its defeat in World War I, Germany seemed on the brink of collapse. Its money lost all value. In 1918 at the end of the war, a loaf of bread cost 2 German marks. By the summer of 1923, the price of single loaf of bread had risen to 4 million marks. The people responded with strikes, protests, brawls, assassinations, and open rebellions. Extremist groups plotted to seize power: Communists wanted a Soviet-style state; Nazis wanted a "pure" Germany free of Jews and Communists. The new democratically elected German government, known as the Weimar Republic, seemed unable to control the situation.

The art reflected the period. Some avant-garde artists, like Georg Grosz, took an active political stance, using their work to agitate for change. Most, however, were not overtly political. Some captured the despair of the time—painting prostitutes and other

downtrodden in city settings. Others, like social realist Otto Dix, painted about the horrors of the World War.

Because of its themes and styles, avant-garde art provoked controversy. Its abstract forms troubled traditionalists. They called for a return to the realistic art of the early 19th century. Right-wing nationalists thought modern art insulted German values. They looked on paintings showing the horrors of war as mocking German patriotism and militarism.

The shrillest voices belonged to the Nazis. They saw modern art as degenerate and degrading—a product of an intellectual elite who had lost touch with the German people. They thought its "distorted" images and forms showed the artists were mentally ill. Since they blamed almost every problem on the Jews and Communists, they often referred to all the different kinds of modern art as "Jewish" or "Bolshevik" art. A Nazi leader announced: "This alien Syrian-Jewish plant must be pulled out by its roots."

Anyone who wanted to work as an artist had to be approved by the state chamber on the arts.

Although the Nazis talked of banning modern art, this was out of the question in a democratic Germany. And, for a time, German democracy grew more stable. The Weimar Republic replaced the old devalued mark with a new sounder currency. Foreign governments helped Germany restructure its debt. As the economy stabilized, memberships in the Communist and Nazi parties dropped.

But in 1929, the worldwide Depression struck Germany hard. Six million people lost their jobs. As conditions grew worse, more and more people favored radical solutions. Many felt their only choice was between the Nazis or the Communists. By the end of 1932, the Nazis were the largest party in Germany. But they didn't hold a majority in the German legislature. After several failed attempts to form governments, German President Paul von Hindenburg named Nazi party leader Adolf Hitler as Chancellor of Germany in January 1933. Von Hindenburg and the leaders of big business thought they could control Hitler. They were wrong. Hitler moved quickly to set himself up as dictator.

Nazi "Purification" of the Arts

Hitler saw himself creating a new Germany, pure of outside influences. As part of this task to get rid of "un-German" influences, Hitler started censoring the arts. In May 1933 at universities across Germany, Nazis burned thousands of "un-German" books in huge bonfires. That same spring, they fired all modern artists who held teaching positions and any museum director who admired modern art. Nazis also raided the Bauhaus school and ordered it shut down. In the fall, the Nazi government permanently closed the modern art section of the National Gallery in Berlin.

The responsibility for "cleansing" German culture fell on Joseph Goebbels, the minister for propaganda and popular culture. In November 1933, Goebbels set up separate state bureaucracies, known as chambers, to control film, theater, music, radio, journalism, literature, and the arts. Anyone who wanted to work as an artist had to be approved by the state chamber on the arts. Members of the Gestapo, the Nazi secret police, conducted searches of banned artists' homes to make sure they weren't creating new works. The arts were now part of the Nazi state's vast propaganda machine.

Until November 1934, it appeared that modern art might have a place in this propaganda machine. Some Nazis called on the regime to make good use of modern artists who had Nazi sympathies. They pointed to Hitler's ally Mussolini, who had embraced Futurism, a form of Cubism, for his fascist dictatorship in Italy. Goebbels seemed to support this view. In his house, he displayed several pieces of modern art created by artists with Nazi loyalties.

But at a Nazi Party rally in Nuremberg in November 1934, Hitler made clear his hatred of avant-garde art. He railed that "the driveling Dadaist, Cubist, and Futuristic 'experience'-mongers would never under any circumstances be allowed any part in our cultural rebirth." The Fuhrer had spoken: All modern art was "un-German." Goebbels quickly got rid of his modern art works.

With modern art dead in Germany, proclaimed the Nazis, a new German art would flower. People waited. Traditional painting and sculpture continued. But nothing new developed. Goebbels warned people not to "get impatient."

After some magazines complained about the emptiness of German art, Goebbels banned art criticism. No one could publish any opinion about art.

Great German Art Exhibit

The Nazis did not allow anyone to doubt that they had created a great new culture. They held small art exhibits throughout Germany with titles such as "Blood and Soil," "Race and Nation," and "Pictures of Family." The exhibits showed works of art created by state-approved artists. The works were done in the state-approved realistic style with state-approved themes: the beautiful German countryside, Greek mythology, healthy German bodies, strong German youth, happy German families, hard-working German farmers, and heroes and heroic death. The art was simple, easy-to-understand, and predictable. It hid the ugly truth of the Nazi regime.

During his speech in 1937 opening the new House of German Art, Hitler proclaimed that German art would be free from the influence of modern art, Jews, and Communists. (Corbis-Bettmann)

The Nazis also held several small exhibits ridiculing modern art. With titles like "Chamber of Horrors," "Cultural Bolshevism," and "Eternal Jew," these exhibits served to bolster the lie that modern art was a Jewish-Communist concoction totally alien to German art.

These exhibits of "German" and "un-German" art were forerunners to the two large exhibits staged in Munich in 1937—the Great German Art exhibition and the Degenerate Art exhibit. To assemble these exhibits, Goebbels relied heavily on Adolf Ziegler, the head of the state chamber on art.

From more than 16,000 pieces of art submitted, Ziegler and his staff selected about 600 works for the Great German Art exhibition. Hitler personally approved the final selections.

Ziegler organized the exhibit by subject matter. Landscapes, which made up almost half the paintings, were in one section. Portraits of historical figures filled another—and so on. Only one work portrayed a non-German. It was a bust of Hitler's ally Mussolini.

The art was for sale. Hitler wanted all Germans to collect the new art. When someone purchased a work, it was removed and replaced with another. Hitler himself bought many works and donated them to public buildings. Throughout the Nazi era, a high honor for any painting was the label: "Purchased by the Fuhrer."

Degenerate Art Exhibit

For the Degenerate Art exhibit, Ziegler looted more than 5,000 modern works from museums throughout Germany. Air force commander Hermann Goring, who later earned a reputation for looting museums across Europe, took 14 of the pieces for his private collection—four van Goghs, four Munchs, three Marcs, one Gauguin, one Cezanne, and one Signac.

Ziegler selected almost 700 works for the exhibit. He designed the exhibit so it would shock most Germans. By jamming all the works in a small space, he overwhelmed the viewers with stimuli. He covered the walls with large graffiti-like labels insulting the art works. To enrage people that taxpayer dollars had been wasted in buying these pieces, he put the purchase price next to each one. He failed to mention that many of the works had been purchased with the inflated currency of the 1920s. To make it clear that the works were offensive, he made the exhibit open to "adults only." He published a pamphlet that further insulted the art. Someone who visited the exhibit remembered it this way:

> The strong colors of the paintings, the interfering texts, the large wall panels with quotations from speeches by Hitler and Joseph Goebbels all created a chaotic impression. I felt an overwhelming sense of claustrophobia. The large number of people pushing and ridiculing and proclaiming their dislike for the works of art created the impression of a staged performance intended to provoke an atmosphere of aggressiveness and anger. Over and over again, people read aloud the purchase prices and laughed, shook their heads, or demanded "their" money back.

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Ziegler arranged the art to show how it supposedly offended German values. In the first room, he exhibited works that the Nazis thought offended religion. One of the works was Beckman's *Descent from the Cross*, a deeply religious painting. Because its colors and forms weren't realistic, the Nazis claimed it was an attack on religion. Another room featured offenses to morals. On one wall labeled "Degradation of the German Woman" hung pictures of prostitutes and strippers. Another wall, labeled "Deliberate Sabotage of National Defense," include two paintings by Dix—*War Cripples* and *The Trench*. They showed suffering German soldiers in World War I, but the exhibit's labels and pamphlet said the paintings mocked the soldiers.

The exhibit was an overwhelming success. Drawn by the sensationalism, people flocked to the Degenerate Art exhibit. More than three times as many people saw it than the Great German Art exhibit. It traveled from Munich to other German cities. By the time it closed, more than 3 million people had seen it. This is more than have ever seen any exhibit of modern art.

Ziegler and his staff continued rounding up pieces of modern art. By the end of summer 1937, they had confiscated more than 16,000 works from museums and private collections throughout Germany. Goebbels noted in his diary: "We hope at least to make some money off this garbage." Much of it was sold to foreign museums and collectors. In one day, the Fischer Gallery in Switzerland auctioned more than 100 pieces by Picasso, Braque, Chagall, Gauguin, van Gogh, and artists from the Degenerate Art exhibit. The Nazis destroyed what they couldn't sell. On March 20, 1939, they burned about 5,000 works in the courtyard of Berlin's fire station.

Many modern artists fled Germany, among them Grosz, Kandinsky, and Beckman. Those who stayed either stopped making art or created safe pictures. Dix was one of those who remained. He was imprisoned briefly. Recalling what he did during the Nazi era, Dix said: "I painted landscapes. That was tantamount to emigration."

The Nazis kept tight control on the arts throughout the war. The Great German Art exhibition became an annual event, the last one held in 1944.

At the war's end in 1945, the allies removed Nazi-sponsored art from museums and public buildings. Most of it was crated and shipped to America. By 1986, almost all of it had been returned to Germany, where it has remained in storage. It is tainted as the official art of the Nazi regime, one of the most evil governments in human history.

In 1991, the Degenerate Art exhibit made another appearance. The Los Angeles County Museum of Art somehow managed to find 175 of the almost 700 original works and put them on display. The show proved popular and traveled to Chicago, Washington, D.C., and Berlin.

For Discussion

1. Why do you think the Nazis suppressed modern art?
2. In 1939, the Nazis sold much modern art and destroyed what they couldn't sell. The proceeds from the sales went to the Nazi government. If you were an art dealer in 1939, would you have bought art from the Nazis? Why or why not?
3. What do you think should be done with the official Nazi art currently stored in Germany?
4. Do you think that there are certain types of art that the government should censor? Why or why not?

A C T I V I T Y

Should Government Ban Offensive Art Work?

Nazi Germany serves as a horrible example of total state control over the arts. The government dictated what artists could and could not create. No government today exercises this kind of control. But most governments, including that of the United States, exercise some controls on art. For example, the U.S. Supreme Court has ruled that the government may ban obscene works. There are frequently calls to ban or regulate other art work that people find objectionable. In this activity, you will have a chance to decide whether the state should place controls on some forms of art.

In small groups, discuss whether the government should ban each of the kinds of art listed below. Think of reasons for and against banning each. Then discuss and decide. Be prepared to discuss your decisions and reasons with the whole class.

1. Art works that promote racism
2. Art works with graphic sexual images
3. Art works that hold a religion up to ridicule
4. Art works with graphic violent images

Music on Trial: Rock, Rap, and Responsibility

In 1988, a Nevada couple claimed that their son committed suicide after listening repeatedly to "Suicide Solution," a heavy-metal song recorded by the band Black Sabbath.

In 1994, Curt Cobain, singer and songwriter for the rock group Nirvana shot himself after a prolonged bout with depression. Many believe that Cobain's suicide was an expression of the hopelessness and alienation that were trademarks of his music.

In 1995, Joe Gallegos, a Colorado youth, died in a shootout with police after he murdered his roommates. Acquaintances speculate that he was obsessed with "Locc 2 da brain," a rap tune in which a street gangster murders his enemies.

Months later, rap star Tupac Shakur was fatally wounded by an unknown assailant in Las Vegas. Shakur's death was the final chapter in a violent personal history that seemed to reflect the credo of guns and gangs featured in his music.

Six months after Tupac's death, Christopher Wallace, a.k.a. Notorious B.I.G., was gunned down outside a Los Angeles music awards ceremony.

In 1957, rock 'n' roll fever was sweeping the nation. Here, two teen-agers get down to business on the dance floor. (UPI/Corbis-Bettmann)

In January 1997, teen-agers in Vancouver, Canada, rioted in celebration of a concert given by Marilyn Manson, a shock rocker who wears androgynous make-up, Nazi uniforms, and fishnet stockings. Manson, who renamed himself after mass-murderer Charles Manson, drinks his own blood and urges fans to "kill everyone and let your god sort them out."

Over the past decade, contemporary popular music has become the focus of intense public scrutiny. Many believe that the lyrics and lifestyles expressed by shock rockers, heavy-metal, and gangsta rappers promote hopelessness and romanticize gang life, drug use, and violence against women. They argue that the thoughts and feelings expressed in this music pose a menace to society and should be subjected to tighter control.

Others believe that artists and the music they create serve a vital function by reflecting the society we live in. They maintain that rockers and rappers are protected by the First Amendment's guarantee of freedom of speech.

Still others argue that certain categories of speech stand outside the protection of the First Amendment. They point out that the U.S. Supreme Court has ruled that the First Amendment does not protect obscene material. The court defined obscenity as material that appeals to prurient interest, is patently offensive, and fails to make a significant contribution to literature, the arts, politics, or science.

The controversy surrounding grunge, heavy metal, and gangsta rap is not new. Other music in other times has caused similar reactions.

The 1950s: Rock and Roll Is Here to Stay

During World War II, people moved from the South to work in the defense plants of Los Angeles, Chicago, and the industrial Northeast. They brought their own music with them. This rural folk and blues music formed the roots of rock, country, and rhythm 'n' blues.

In the beginning, only a few small companies recorded blues and country singers. Most of these musicians were not professionals. They often signed away their rights to a song for $5 and $10 apiece. At these rates, a small record company could afford to take a chance on recording an unknown player. These early rock 'n' roll and rhythm 'n' blues recordings allowed the music to grow and change, but they were meant to reach only limited audiences.

By the 1950s, however, teen-agers had begun to tune into radio broadcasts featuring the music of future stars like Carl Perkins, B.B. King, Jerry Lee Lewis, and Fats Domino. As early as 1952, white teen-agers were traveling to black neighborhoods in Chicago, New York, and Los Angeles to buy rhythm 'n' blues records from black record stores. The artists and the companies who recorded them began to cash in on a new-found "crossover" popularity in which these specialized artists began to appeal to a broader audience.

US HISTORY

Sam Phillips, a small Southern blues record producer, noticed the lure that black music held for white teenagers. "If only I could find a white man who had the Negro sound and the Negro feel, I could make a million dollars," Phillips reportedly claimed. Phillips' quest was not hopeless. A young white singer from Memphis, Tennessee, described his early musical experiences this way:

> We were a religious family, going round together to sing at camp meetings and revivals and I'd take my guitar with us when I could. I also dug the real low-downed Mississippi [blues] singers like Big Bill Broonzy and Big Boy Crudup although they would scold me at home for listening to them. "Sinful music" the townsfolk in Memphis said it was. Which never bothered me I guess.

The young white singer's name was Elvis Presley. Sam Phillips heard Presley perform and hired a trio of country musicians to back the young singer. With Elvis playing guitar and singing "It's All Right," a blues tune written by black singer Big Boy Crudup, this unassuming group made rock 'n' roll history. By the end of 1956, rock 'n' roll tunes from small record labels like Sam Phillips' accounted for more than one-third of all the Top Ten hits, according to the record industry magazine, *Billboard*.

The controversy surrounding grunge, heavy-metal rock, and gansta rap is not new.

The music recorded by these crossover artists stirred up a great deal of controversy. Anxious parents stood on the other side of a generation gap listening to the unfamiliar sound of boogie woogie, electric guitars, and rhythm 'n' blues. The lyrics of these songs were often full of incomprehensible slang and thinly disguised sexual innuendo. The new music created a strong backlash in a population that was not fully prepared for racial equality or changing sexual attitudes.

Alan Freed, a veteran New York disc jockey and pioneer promoter of rock 'n' roll, was forced off the air when his nationally syndicated TV show "Rock 'n' Roll Dance Party" showed black singer Frankie Lymon dancing with a white girl. Richard Berry, author of the rhythm 'n' blues favorite "Louie, Louie," was questioned by FBI agents who responded to public accusations that the song's lyrics were obscene.

Organized religion took a strong stand against rock 'n' roll. Boston's Reverend John P. Carroll claimed that "the suggestive lyrics on rock 'n' roll records are a matter for law enforcement agencies." Chicago's Cardinal Stritch proclaimed that rock 'n' roll dancing and "tribalism...could not be tolerated by Catholic youth."

The 1960s: I Wanna Hold Your Hand

The Beatles landed in New York in February 1964. Originally, the image the English group put forth was non-controversial. This talented quartet of loveable mop-heads quickly caught the attention of American youth. The Beatles' first American hit, "I Wanna Hold Your Hand," became the fastest-selling record in history.

Within two years, however, the Beatles had become embroiled in some of the major social issues of the day. In 1966, John Lennon claimed that the Beatles were "more popular than Jesus" and that Christianity would "vanish and shrink." Radio stations in Birmingham, Alabama, banned the Beatles' music. Other towns followed suit. Bonfires of Beatles records and memorabilia lit up the sky in communities across the nation. The BBC, Britain's national broadcasting corporation, refused to play certain Beatles tunes on the grounds that they encouraged drug abuse.

The Beatles were not the only musicians who were criticized for endorsing the counterculture of the 1960s. By 1966, a new breed of American rockers had come to prominence. Artists like Bob Dylan, Janis Joplin, the Grateful Dead, and the Jefferson Airplane weren't simply writing new rock 'n' roll. They were providing living models for a new lifestyle. Much of the new music resonated among young music fans and gave expression to their thoughts and feelings about personal freedom, racial equality, the Vietnam War, and experimentation with drugs.

In 1969, half a million young people gathered to hear their favorite bands at Woodstock, New York. By that time, America's faith in its own values had been challenged by the prolonged conflict in Vietnam, the violence at the 1968 Democratic Convention in Chicago, and the assassination of several of its most respected leaders. Backed up by an unofficial network of "underground" radio stations that advocated the new hippie and anti-Vietnam war lifestyle, rock music once again seemed to be taking sides in the bitter conflicts that were sweeping mainstream America.

The 1990s: The Beat Goes On

For more than a decade, attempts have been made to put limits on objectionable lyrics in rap, heavy-metal, and grunge rock. During the 1980s, Tipper Gore, the wife of then-Senator Al Gore, spearheaded an attack on violent

and obscene lyrics. Her organization, the Parents Music Resource Center, organized a campaign to persuade record companies to place warning labels on some albums.

The recent call for control over controversial song lyrics has garnered support from across America's political spectrum. A television commercial by C. DeLores Tucker and William Bennett begins by saying, "I'm a liberal Democrat....And I'm a conservative Republican. But we're both worried about the society our children live in today."

Bennett, the former secretary of education under the Reagan administration, calls for self-regulation by artists and record companies who produce what Bennett calls "filth for profit." C. DeLores Tucker is a civil rights veteran who marched with Martin Luther King. Tucker is concerned that rap music is demeaning to women. Her organization, the National Political Congress of Black Women, advocates banning "the sale of pornographic and misogynistic lyrics." Although they disagree over many political issues, both Tucker and Bennett see eye to eye on the issue of rock, rap, and obscenity.

Tucker is also critical of shock-rocker Marilyn Manson. She claims that Manson is responsible for "the dirtiest, nastiest porno directed at youth that has ever hit the market." Manson has been jailed for committing sex acts on stage in front of thousands of teen-agers. Salt Lake City and Oklahoma City both passed resolutions banning Manson's concerts.

In response to the controversy surrounding Manson and his shock-rock recordings, teen counselor Lynda Fletcher believes that parents should pay more attention to popular music. She advises parents to "play shock-rock music with their kids and explain why the lyrics are offensive."

Shock rock, heavy-metal, and gangsta rap also has its defenders. Bill Stephney, owner of a Manhattan music production company, argues that rap doesn't cause society's problems, it merely responds to them. As evidence, he points to the recent past when a new rash of problems began to plague black communities all across America. "It is very easy to hear the differences before and after 1985," Stephney maintains. "The messages and images [of rap] go from talking about parties, finding girls, and hanging out, to Uzis, nine-millimeters, gun battles and crack wars."

A six-year study of music fans by Jeff Arnett, a researcher at the University of Missouri concludes that heavy-metal music often has a calming effect on "metalheads." Arnett observes that heavy-metal music appeals to young people with aggressive tendencies because it makes them feel like they "belong," that they share the same feelings and observations about society with others, and they can use the music to harmlessly release their aggression.

While speaking about Joe Gallegos, the young Colorado man who murdered his roommates, Ron Stallworth, a veteran cop and gang expert, maintained that "[w]hen somebody says the music made him do it, we should instead look at the person's socialization process: Who were his friends? What did he do with his life?" Stallworth says, "There were other things going on in [Gallegos'] life." In fact, Gallegos came from a broken home, had a history of methamphetamine use, and carried a criminal record including a conviction for assault.

Throughout the 20th century, rock music, from rhythm 'n' blues to heavy-metal and rap—has been linked to some of society's most difficult issues. Should this controversial music be censored? Can music actually encourage lawlessness, violence, or immorality? Do the ideas and feelings relayed by rap and heavy metal music actually cause the problems they describe or do they act as a mirror for society's problems?

For Discussion

1. How did controversy first arise around rock 'n' roll?
2. What were some issues that surrounded the rock music of the 1960s? What are some issues of today's music?
3. Do you think certain music is harmful? If so, should it be restricted? Explain your answers.

A C T I V I T Y

Should Record Companies Stop Marketing Controversial Artists and Their Work?

Many people believe that record companies should not produce or distribute music that encourages lawlessness, violence, or immorality. Is the music industry responsible for the content of the music it sells? Should record companies refuse to produce and distribute controversial artists?

1. Form groups of four students each. Each group should review the article and create arguments for and against self-censorship in the recording industry.
2. After reviewing the pros and cons of music industry censorship, each group should write a one-paragraph opinion on their findings and choose a reporter to present its opinion to the class.
3. Reconvene the class and discuss the opinions of each group.

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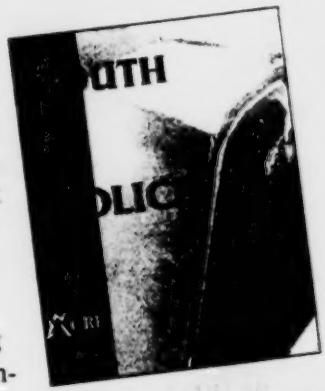

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The Riddle of the Romanovs

In law and history there are many mysteries. Today, forensic science is helping courts and historians unravel new and old puzzles, among them the 80-year-old mystery of what happened to last tsar of Russia and his family.

Tsar Nicholas II of Russia pictured with his family. From left to right: Olga, Marie, Tsarina Alexandra, Anastasia, Alexei, and Tatiana. (Corbis-Bettmann)

By the summer of 1918, Russia had erupted in civil war. On one side were the communist revolutionaries, called the Reds or Bolsheviks, who favored redistribution of wealth and worker control of government. They held the major cities, but in the countryside White armies were on the move. These forces opposed the revolutionary government, some favoring democracy and some the restoration of the monarch.

WORLD HISTORY

In the middle of this bloody conflict stood the fate of the last tsar of Russia, Nicholas II, and his family. Two years earlier, Nicholas had been forced from the throne by a provisional democratic government. In 1917, the democratic government too had lost power, this time to the Bolshevik revolutionaries led by Vladimir Lenin. The Bolsheviks hated the old rulers of Russia, especially the Romanovs, the family that had ruled for 300 years. As tsar, Nicholas was the head of the Romanov family, made up of dozens of nobles and aristocrats who owned much of Russia's land and wealth.

By spring 1918, intending to place the tsar on trial, the Bolsheviks had moved Nicholas to the town of Ekaterinburg on the slopes of the Ural Mountains. With him were his wife, the Tsarina Alexandra; four young daughters, the Grand Duchesses Olga, Tatiana, Marie, and Anastasia; and the tsar's son and heir, 13-year-old, Alexei.

To imprison the royal family, the Bolsheviks took over the two-story mansion owned by a rich engineer named Ipatiev. For security and to protect against the prying eyes of the townspeople, they built a tall wooden fence around the place and started calling it "The House of Special Purpose."

The royal family stayed on the top floor with their physician, Dr. Botkin, and three servants. Their guards also occupied rooms in the house. Cut off from the outside world and confined to their rooms except for meals and brief periods

(Continued on next page)

Forensic Evidence

forensic (fah ren' sic) involving the application of scientific...knowledge to legal matters.

—Webster's New World Dictionary

Advances in science and technology are invading the courtroom and even solving past mysteries. This edition of *Bill of Rights in Action* takes a look at several issues—past and present—involving forensic evidence.

World History: The Riddle of the Romanovs

U.S. Government: DNA, Lie Detector, and Voiceprint Evidence

U.S. Government: How Reliable Are Eyewitnesses?

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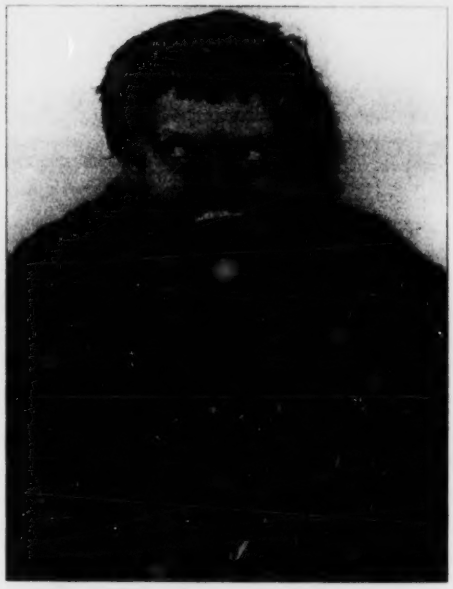
of exercise, the family prayed for release. They hoped the Bolsheviks would exile them to some foreign country or that the White armies fighting in the area would take over the town and free them.

Unknown to the royal family, rather than a promise of salvation, the fall of the city would seal their doom. Fearing that the White army would free the tsar, the local Bolshevik command, with Lenin's approval, had decided to kill the tsar and his entire family.

In the early morning hours of July 17, 1918, they acted. After 78 days in the House of Special Purpose, something terrible happened to the royal family.



Anna Anderson, pictured in 1955, claimed to be Grand Duchess Anastasia, youngest daughter of Russia's last tsar. She said she escaped with her life when Bolsheviks murdered the royal family in 1918. (UPI/Corbis-Bettmann)

The First Investigation

For political reasons, the Bolshevik government in Moscow decided to keep the fate of the family secret. It admitted that the tsar had been executed for crimes against the Russian people, but claimed that the rest of the family had been removed to safety. Many people, including relatives of the royal family, believed these reports and held out hope that the tsarina and her five children were alive.

On July 25, the White army entered Ekaterinburg and officers rushed to the Ipatiev house. It was all but empty, only rubbish and odds and ends of the family's possessions littered the floors. The Whites began an immediate inquiry, soon appointing a seasoned investigator Nikolai Solokov to lead it.

Solokov had only five months to complete the investigation before Ekaterinburg again fell to the Bolsheviks. He interviewed townspeople, collected physical evidence, and took statements from Bolshevik prisoners. Eventually, he had to flee Russia when the White armies were defeated and the Bolsheviks gained control of the entire country. He published the findings of his investigation in 1924.

According to Solokov, the tsar, his wife, their five children, the doctor, and three servants all died in the early morning hours of July 17. The commander of the Ipatiev house had ordered them down to a small basement room, supposedly for their safety. Suddenly, a squad of executioners appeared at the door. The commander read a brief execution order and everybody started firing pistols into the helpless victims. The tsar fell first with a bullet to the face. After 20 minutes, the bloodshed ended and the 11 bodies were loaded on a truck and taken to the dense Koptyaki Forest some 12 miles from the city. There, according to Solokov's evidence, they were doused with acid to conceal their identity, burned, and thrown down an abandoned mine shaft.

But Solokov never found the bodies. The communist government in Russia, now the Soviet Union, kept the fate of the Romanov family a well-guarded state secret, only admitting their deaths in 1926. Not trusting the communists, many people, including living members of the Romanovs, held out hope that at least some members of the royal family survived.

The Case of Anna Anderson

Soon after the civil war ended in Russia, a number of people came forward in Europe claiming to be members of Tsar Nicholas's immediate family. Most of the pretenders to the Romanov legacy were quickly exposed as frauds. But not all.

In 1920, an unknown woman tried to commit suicide by jumping off a bridge into a canal in Berlin, Germany. Rescued, she was rushed to a clinic in a dazed and confused state. At first, she had a complete loss of memory, but slowly she began to recover. One day, she saw a picture of the tsar's family and became quite excited. Soon she was claiming to be one of the grand duchesses. Rumors spread that a member of the tsar's immediate family had survived.

Claiming that her memory had recovered, the unknown woman told a remarkable story of how she, as Anastasia, had survived the slaughter. According to the story, Anastasia had been saved from a fatal wound because one of her sisters shielded her from the bullets. Though seriously wounded, she awoke under starry skies. A soldier named Tchaikovsky

saved her and smuggled her into Romania. There she bore him a son, but Tchaikovsky was soon killed. That is when she fled to Berlin to try to find Romanov relatives. Unsuccessful in her attempt, she became desperate and depressed and decided to kill herself.

What convinced many people of the unknown woman's claim was her ability to provide details about the Romanov family's life in pre-revolutionary Russia. She also bore a strong physical resemblance to the young duchess and had scars on her body consistent with pistol and bayonet wounds. So convincing was the unknown woman that even several relatives of the Romanovs supported her claims.

Most did not. They viewed the woman as a clever imposter, too common to be of Romanov blood and breeding. They also noted that the woman could not, or would not, speak Russian. Frustrated by the family's refusal to recognize her, and now calling herself Anna Anderson, the woman filed a series of lawsuits in German courts for formal recognition. Relatives of the dead Tsarina Alexandra opposed her claim.

While most of the mysteries about the death of the Romanovs now seem resolved... a few remain.

Lacking dental or fingerprint records of Anastasia, investigators on both sides of the issue resorted to other methods to prove their case. For Anderson's side, experts analyzed photos of Anastasia and Anderson and claimed great similarity. Handwriting experts also argued that their penmanship was the same. Investigators for those who opposed Anderson came up with their own theory about the woman's identity. They claimed that she was a Polish woman named Franzisca Schanzkowska who had disappeared from a Berlin boarding house shortly before the unknown woman was pulled from the canal. Photos of the woman did look like Anderson and the investigators claimed Schanzkowska had many wounds suffered as a result of an explosion in a munitions factory.

The lawsuits dragged on for nearly 30 years ending only in 1970. At that point, the German court ruled that Anderson had failed to prove that she was Anastasia. Frustrated by her many years of court battles, Anderson moved to the United States where she died in 1984.

Secrets From the Forest

In 1989 startling news came from the Soviet Union. It was a time of great change. President Mikhail Gorbachev promoted a greater openness in Soviet society and peaceful relations with the West. On April 12, headlines announced that the bones of the Romanov royal family had been found in a mass grave in the Koptyaki Forest. In fact, they had been discovered by amateur historians led by Alexander Avdonin and Geli Ryabov in 1979. Fearing how the Soviet government might react, the finders hid the information until things changed.

In 1991, Soviet authorities opened the shallow grave. They discovered the tangled skeletons of nine people along with sections of rope and broken sulfuric acid pots. A team of Soviet scientists immediately began to try to identify the remains. Based on studies of the skeletons, they were able to determine the gender and age and found them consistent with those of the royal family, the doctor, and the servants. All of the skeletons showed evidence of massive traumatic injuries and gun shot wounds. The dental work of some was the type used near the turn of the century and of the highest quality, affordable only by the richest of people. Scientists made careful skull measurements and compared them to life photos of Romanov family members. They superimposed pictures of the skulls on similar photos and found a match. They noted evidence of old fractures or injuries to the bones and compared them to known medical conditions of family members. The scientists concluded that occupants of the lonely grave in the forest were the tsar and the others from the Ipatiev massacre. Only one thing did not match. The scientists could reconstruct only nine skeletons. There should have been 11. They concluded that Alexei and one of the grand duchesses, probably Marie, were missing.

To help confirm the findings, the Soviets asked several American forensic scientists, including Dr. William Maples of the University of Florida, to conduct an independent study. His team reached similar conclusions to the Soviets, but believed that the missing bodies were those of Alexei and Anastasia, not Marie.

Meanwhile, other Soviet citizens, including writer Edvard Radinsky, had searched Soviet archives to find more clues about the fate of the tsar's family. Through careful research and detective work, they added new details to the story of the tragedy of Ipatiev house. For example, killing the royal family in the

cellar had been no easy matter. The young girls, and perhaps even Alexei, had sewn precious jewels—diamonds, rubies and the like—into their clothes to hide them from the Bolsheviks. Like bullet-proof vests, this jewel-encrusted clothing had protected them from the bullets. The executioners had to use bayonets to finally kill them. Also, several accounts suggested that two of the bodies had been burned and buried separately from the others.

Still questions remained. In 1992, the Soviets decided to conduct DNA testing on the remains. This process compares sequences of genetic material. DNA can be found in bone, blood, hair, and even saliva. Using blood samples donated by Prince Philip of England, the grandnephew of Tsarina Alexandra, Dr. Gill of the British Home Office Forensic Science Service conducted the tests. The testing confirmed that five bodies, a father, a mother, and three daughters were all part of the same family. It also proved that the mother was Alexandra. The results were confirmed by two other laboratories. Scientists ran another test comparing Tsar Nicholas's DNA with that of his dead brother Grand Duke George, whose body had been exhumed for a tissue sample. The test showed they were from the same family.

These tests left little scientific doubt about the identity of the remains found in the mass grave. But what about the missing skeletons? Believers of Anna Anderson found support for their theories when Dr. Maples claimed that Anastasia's was one of the missing bodies. Two of Anderson's supporters, the granddaughter of the doctor who died with the Romanovs and her husband, Marina and Richard Schweitzer, asked Dr. Gill to compare Anna's DNA and that of the Romanov bones. Though Anderson had died and been cremated in 1984, a lab sample of her tissue was located. A living relative of the missing Polish woman Schanzkowska, who the Romanovs claimed was Anderson, also provided a blood sample for testing. Now Dr. Gill could test Anderson's DNA against both.

The test results shocked those who believed in Anderson's story. They showed that she was not related to the Romanovs, but was related to Schanskowska. Other labs confirmed the results showing that Anna Anderson had, by false belief or fraud, been an imposter all along. Some supporters rejected the tests and continue to believe in her claims.

While most of the mysteries about the death of the Romanovs now seem resolved through the use of DNA testing, a few remain. What really happened to the bodies of the missing Romanov children? Some believe they were burned and buried somewhere in the Koptyaki Forest and someday may be found. Others suggest that one or more of the children may have survived.

If anyone does surface claiming to be the last of the Romanov children, DNA testing should quickly settle the matter.

For Further Reading

King, Greg, *The Last Empress*, New York: Buch Lane Press, 1994.

Massie, Robert K., *The Romanovs*, New York: Random House, 1995.

Radinsky, *The Last Tsar*, New York: Double Day, 1992.

For Discussion and Writing

1. Why did the Bolsheviks want to eliminate the entire Romanov royal family? Why did they want to cover up what they did?
2. Why at this time might it be important to find out about the fate of the Romanov royal family?
3. Why might some people reject the findings of DNA testing?

ACTIVITY

Answering Historical Mysteries

DNA testing and other modern forensic science techniques have been used to try to answer other historical issues and questions. Working as individuals or in groups, select one of the following recent cases and research and write a one-page report describing what historians were trying to determine, what methods they used, and the results.

- The Death of Pharaoh Tut Ankh Amun
- The Fate of President Zachary Taylor
- The Death of Jessie James
- Napoleon's Last Days
- The Iceman
- The Bog People
- The Death of Adolf Hitler
- The Whereabouts of Joseph Mengele
- The Killing of Martin Luther King
- The Fate of Butch Cassidy and the Sundance Kid

DNA, Lie Detector, and Voiceprint Evidence: Does It Belong in the Courtroom?

While a person is questioned, the polygraph machine measures changes in blood pressure, pulse, breathing, and perspiration. (Corbis-Bettmann)

In investigating crimes, police often rely on forensic experts—criminalists, technicians, ballistic experts, medical examiners. After any serious crime, the scene is combed for fingerprints, bullets, fibers, and other physical evidence that can be taken to a lab and analyzed. Blood, hair, skin, or semen can be turned into a DNA fingerprint, which can be compared to DNA samples taken from suspects. Even a criminal's voice, if captured on tape, can be turned into a voiceprint and analyzed to see if it matches a suspect's voiceprint. Police can even ask (but not force) witnesses, or a suspect, to take a lie detector test.

Scientific Evidence in the Courtroom

In 1923, a federal appeals court in *Frye v. United States* handed down a landmark ruling on the use of scientific evidence in the courtroom. The trial court in *Frye* had refused to allow testimony from an expert saying that the defendant had passed a blood pressure lie detection test—a forerunner of the modern lie detector test. The appeals court upheld the trial court's ruling. It stated that, to prevent experts from misleading juries, forensic witnesses could only present evidence based on scientific techniques "sufficiently established to have gained general acceptance in the particular field in which it belongs." The court found the lie detector did not pass this "general acceptance" test. A vast majority of other courts in the country adopted this "general acceptance" test for scientific evidence. Using this test, courts have excluded most controversial scientific evidence.

Some commentators, however, felt the *Frye* test went too far. They believed that modern juries would not be fooled by questionable scientific evidence because the opposition could cross-examine, place other experts on the stand, and ask for the judge to instruct the jury to discredit testimony it finds unconvincing. They argued that juries are already allowed to evaluate conflicting testimony from doctors, engineers, and accountants.

In 1974, Congress passed the Federal Rules of Evidence. These rules seemed to allow all evidence, including scientific, as long as it was relevant to the case. But most courts still clung to the *Frye* test for scientific evidence.

In 1993, the U.S. Supreme court in *Daubert v. Merrell Dow Pharmaceuticals, Inc.* overruled the 70-year-old *Frye* test saying it didn't conform to the Federal Rules of Evidence. But the court stated:

> That the *Frye* test was displaced...does not mean, however, that the Rules themselves place no limits on the admissibility of purportedly scientific evidence. Nor is the trial judge disabled from screening such evidence. To the contrary, under the Rules the trial judge must ensure that any and all scientific testimony or evidence admitted is not only relevant, but reliable.

The court in *Daubert* pointed to a number of factors that might indicate the scientific evidence was reliable. Among them were whether the scientific technique can be tested, its known rate of error, whether standards exist to control its operation, its general acceptance in the field, and the possibility the evidence would overwhelm, confuse, or mislead the jury. The general acceptance test became just one of several factors.

Since *Daubert* merely interpreted the Federal Rules, the case only applied to federal courts. Most criminal

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trials take place in state courts, which are governed by state evidence codes. Many state legislatures have left the decision over admissibility of scientific evidence to the courts. Some have adopted codes resembling the Federal Rules. Several legislatures have enacted laws banning specific controversial techniques, such as lie detector tests, from being presented in evidence. In short, many state courts still follow the *Frye* test, others follow *Daubert*, and others follow legislative bans on specific evidence.

Lie Detectors

The lie detector, or polygraph, is based on the idea that, when people lie, their body reacts in ways that they cannot control. The polygraph machine continuously measures changes in blood pressure and in rates of breathing, pulse, and perspiration. A needle records the responses on graph paper. During a test, the examiner asks the subject a series of yes-no questions. One question must be an anxiety-provoking question that the subject must lie about. The examiner compares the response to this question to the other responses and interprets whether the subject is lying or telling the truth.

Following the Frye *case in 1923, almost all courts—state and federal—refused to admit polygraph evidence.*

For years, government agencies have used lie detector tests to screen possible security risks. Law enforcement considers them a useful investigative tool. But Congress banned their use in private industry in 1988.

Critics of polygraph tests say they don't work. Defense attorney William G. Hundley watched as his client, implicated in the Koreagate scandal of the 1970s, took a lie detector test. "The needle never moved," said Hundley. Yet his client later confessed that he had lied throughout the test. Hundley concluded: "I don't think there's any medical or scientific evidence which ever tends to establish that your blood pressure elevates, that you perspire more freely or that your pulse quickens when you tell a lie."

Polygraph examiners admit that the test can be beaten. One has even estimated that 50 percent of the population could, through intensive training, learn how to beat the test. Paul Minor, former chief FBI polygraph expert, said: "Can the machine be defeated? Yes, but not easily. When the poly is beaten, it's usually by training or by fluke."

Some polygraph experts estimate that lie detector tests are accurate in 95 percent of all cases. But this figure is disputed and some estimate the range of accuracy as anywhere from 70 to 90 percent.

Support for polygraph testing seems to be growing in the scientific community. A 1982 study of psychophysiologists, scientists who study interrelationships of mind and body, found that 60 percent believed lie detector testing "was a useful tool when considered with other evidence for assessing truth or deception." A second poll taken in 1992 showed that 80 percent of "those psychophysiologists who considered themselves well-informed of the literature believed that the modern polygraph technique was useful when considered with other evidence."

One problem is a lack of standard training and qualifications for polygraph examiners. Only 30 states have set up licensing boards, and no national licensing board exists.

Following the *Frye* case in 1923, almost all courts—state and federal—refused to admit polygraph evidence. A few courts allowed polygraph evidence if prosecution and defense agreed in advance of the test. But at least one state legislature enacted a law banning courts from admitting even agreed-upon polygraph evidence. After *Daubert*, several federal appeals courts began allowing polygraph evidence in certain situations.

Voiceprints

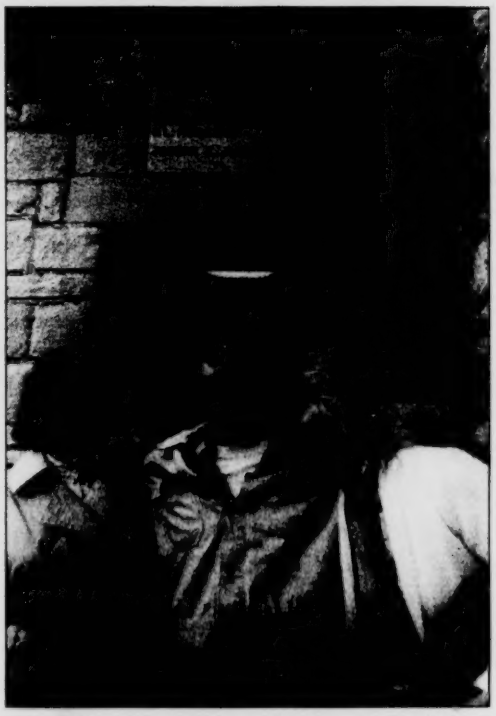
Another controversial technique is the voiceprint, or sound spectrography. It is based on the idea that each individual's voice is unique. According to the theory, this is caused by the unique shape of each person's mouth, throat, and voice box and a person's unique way of moving the muscles to speak.

Sound spectrography was developed during World War II to identify enemy radio operators. The modern spectrograph, used to make voiceprints, came out of the Bell Labs in the 1960s.

The spectrograph has a revolving cylinder with paper attached to it. As the cylinder revolves, a needle moves across the paper according to the recorded

voice's frequency, time, and intensity. The resulting squiggles form a voiceprint, or spectrogram. An examiner can compare voiceprints to determine whether they come from the same speaker.

Comparing voiceprints is different from comparing fingerprints. Everyone's fingerprints remain the same. If Joe makes five prints of his right thumb, they will all be the same. But if Joe makes five voiceprints of him saying, "Put $100,000 in unmarked bills in a brown paper bag," each voiceprint will be different. But, according to the theory, they will resemble each other more than someone else's voiceprint saying the same words.



Gary Dotson was released from prison after serving a total of eight years for a rape that DNA tests proved he could not have committed. (Corbis-Bettmann)

In 1972, Oscar Tosi of Michigan State University conducted 34,000 tests of voiceprints using 250 male students and about 30 examiners. The examiners, who had only undergone a brief one-month training, were given 15 minutes to interpret each test. Tosi found that false identifications occurred in only about 6 percent of the tests.

In 1976, however, a committee of the National Academy of Sciences concluded that "technical uncertainties concerning the present practice of voice identification are so great as to require that forensic applications be approached with great care and caution." Ten years later, the FBI published a report, which several scientists criticized as deeply flawed. It announced that an extensive examination of 696 FBI voiceprint cases covering 15 years revealed just one false identification and two false eliminations. The report also stated that voiceprints had "yet to find approval among most scientists...as a positive test in comparing voice samples."

In 1992, a committee of the International Association of Identification set certification requirements for voiceprint examiners and set standards for conducting voiceprint comparisons.

A majority of courts today admit voiceprint evidence. Most of these courts cite the Tosi study as showing the reliability of voiceprints (and ignore the report from the National Academy of Sciences committee). Courts that still apply the *Frye* test are less likely to admit it.

DNA Fingerprints

One of the newest techniques in forensic science is DNA fingerprinting. DNA (deoxyribonucleic acid) is the genetic code that determines a person's physical characteristics. Each human cell holds the complete genetic blueprint for an individual. No two people, except for identical twins, have identical DNA.

Under an electron microscope, the DNA molecule looks like two ladders spiraling around each other. The "rungs" of these ladders are made of pairs of molecules called "bases"—the essential ingredients of DNA. There are about 3 billion base pairs in one person's DNA. Of those 3 billion base pairs, 99.9 percent are identical in every human. The differences occur in the remaining .1 percent. This sounds small but this is still 3 million base pairs.

Someday, scientists will be able to make a complete map of a person's DNA from a bit of blood, saliva, semen, skin, fingernail, or hair. But DNA fingerprinting does not, at this stage, make a genetic map of all 3 million base pairs. Instead, DNA fingerprinting charts a few selected areas of DNA.

The process involves recovering a small amount of body tissue or fluid, separating the DNA chemically, cutting and sorting it electrically and chemically, transferring it onto a nylon sheet, and adding radioactive probes into selected areas of the DNA. This produces the DNA fingerprint, which looks like a bar code.

The DNA fingerprint from a suspect can be compared to DNA found at the crime scene. If they don't match, then the suspect is cleared. In the last few years, DNA

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fingerprints have played a major role in clearing innocent suspects and freeing wrongly convicted prisoners.

If the suspect's and crime scene's DNA do match, this does not necessarily mean the DNA at the crime scene belongs to the suspect. Since the print charts only a few sections of DNA, conceivably other people could share the same DNA print.

Scientists calculate the probabilities. They do this by consulting databases of DNA patterns. They look to see how often each particular pattern, or band, in the bar code occurs in the general population or in the ethnic group of the suspect. Let's say the bar code consists of just five bands and the scientists find that each of the bands occurs in the population as follows:

Band #1—10 percent (or 1/10)

Band #2—5 percent (or 1/20)

Band #3—20 percent (or 1/5)

Band #4—25 percent (or 1/4)

Band #5—2 percent (or 1/50)

By multiplying the odds of having each band, scientists calculate the odds of having all of them. In this case, the odds of a person sharing the same DNA pattern for all five bands would be 1 in 200,000 (10 X 20 X 5 X 4 X 50 = 200,000).

Some critics believe DNA experts often overestimate the odds of having matching DNA fingerprints. They point out that people of the same ethnic group share more DNA and would be more likely to match DNA than people outside these groups. DNA proponents respond that the FBI now keeps separate DNA databases for whites, Hispanics, Asians, and blacks. But critics contend these groupings are too large. In 1992, a National Academy of Sciences report agreed and recommended a temporary ceiling on odds for DNA matches. In 1996, however, a follow-up report found that the databases, combined with new formulas, gave accurate and powerful odds and lifted the ceiling.

Critics also complain of contamination. Proponents agree that contamination can be a problem if people collecting and storing DNA evidence do not follow proper procedures. But they point out that contaminated DNA will lead to false exclusions—not false matches.

Finally, critics cite poor lab procedures. In one study in 1987–88, of 50 samples sent to the three major private DNA labs, two labs made mistakes on one sample. The 1992 National Academy of Sciences report suggested sending separate samples for testing to ensure quality control, but the report concluded that lab procedures were "fundamentally sound."

The overwhelming majority of court cases have allowed the introduction of DNA evidence. Some state legislatures have specifically written laws permitting it.

For Discussion and Writing

1. What problems do new types of scientific evidence pose for a court?
2. What is the difference between the *Frye* and *Daubert* tests? Which test do you think is better? Why?
3. Between polygraph, voiceprint, and DNA evidence, which do you think is most reliable? Most unreliable? Why?

A C T I V I T Y

Should It Be Admitted Into Evidence?

In this activity, students role play state appeals courts deciding on a proper standard for admitting scientific evidence and applying that standard to three cases.

Form small groups. Each group should (a) review the section on scientific evidence and decide what standard you believe is proper for admitting scientific evidence into court, (b) read the three cases below, (c) discuss and decide whether the evidence should be admitted in each case, and (d) prepare to report your decisions and reasons to the class. In all cases, assume that proper procedures have been followed with the evidence and that the expert is well-qualified in the field.

Cases

In each of the following cases, the trial judge refused to admit the evidence and the party trying to introduce the evidence has appealed.

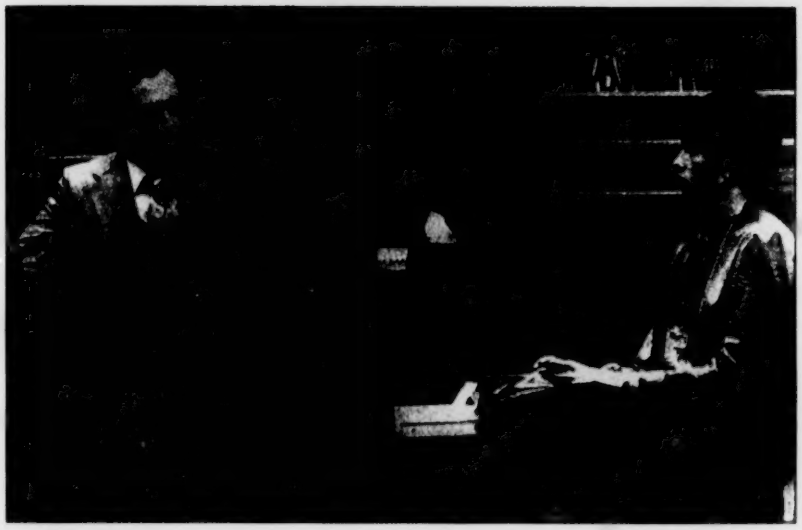
#1. The prosecution wanted to introduce voiceprint evidence that identified the defendant as making a telephoned bomb threat.

#2. The defense wanted to call a polygraph expert to the stand who would testify that the defendant was telling the truth when he denied committing the murder.

#3. The prosecution tried to call a DNA expert who would testify that the blood found on a broken window belonged to the defendant. The judge refused to admit the evidence citing a state law prohibiting all DNA evidence at trial.

How Reliable Are Eyewitnesses?

Robert Leaster was talking with friends on a Boston street corner when two policemen jumped out of a patrol car with guns drawn. The officers handcuffed the 21-year-old Leaster, charged him with the murder of a neighborhood storekeeper, and drove him directly to Boston City Hospital. Leaving the dismayed suspect in the back of their squad car, the two officers disappeared, only to re-emerge with a sobbing woman on their arms. She peered through the window at the handcuffed prisoner and told the officers that Leaster looked like the man who shot and killed her husband. Six months later, Leaster was convicted of murder and sentenced to life without parole.



Nothing is more dramatic in court than when a witness points to the defendant and says, "That's the person who committed the crime." (Corbis-Bettmann)

In a San Diego courtroom, a distraught young woman described her hour of terror at the hands of a rapist. The victim pointed directly at defendant Frederick Daye and stated that he was the offender. "There is no doubt in my mind," she insisted. A second eyewitness testified that he saw Daye push the woman into a car and drive away. The San Diego barber was convicted of rape and sent to prison.

U S GOVERNMENT

Both men were wrongfully accused by eyewitnesses who were certain they had correctly identified the defendant as the offender. Both men were later cleared of the charges against them and released from prison after serving 16 and 10 years respectively. Their cases serve as vivid proof that eyewitnesses can make horrible mistakes.

The Role of Eyewitness Testimony

Eyewitness testimony occupies a prominent place in the criminal justice system. According to a 1988 survey of court prosecutors, an estimated 77,000 suspects are arrested each year based on eyewitness testimony. Beyond providing a strong basis for arrest, eyewitness testimony has great impact in the courtroom.

"It's the most theatrical moment of the trial," says UCLA law professor John Wiley Jr. "Everybody in the jury box looks at the witness, looks at the [eyewitness's] finger and follows the line right to the defendant."

To determine what role eyewitness testimony played in the courtroom, psychologist and memory expert Elizabeth Lofthus conducted an experiment in which subjects served as jurors in a mock trial. First, all jurors heard the same description of the crime, a hypothetical robbery and murder. In one version of the trial, the prosecutor presented only circumstantial evidence. Only 18 percent of the jurors found the defendant guilty. In the second version of the trial, the prosecutor presented the same evidence with one addition—an eyewitness. Seventy-two percent of the jurors found the defendant guilty. This led Lofthus to conclude that jurors place enormous value on eyewitness testimony.

Studies have shown that mistaken eyewitness testimony accounts for about half of all wrongful convictions. Researchers at Ohio State University examined hundreds of wrongful convictions and determined that roughly 52 percent of the errors resulted from eyewitness mistakes. Legal scholar Edwin Borchard studied 65 cases of "erroneous criminal convictions of innocent people." Mistaken eyewitness identification was responsible for approximately 45 percent of Borchard's case studies.

There is no way of telling how many innocent people go to jail due to mistaken eyewitnesses. Most juries arrive at a conviction only after hearing a broad spectrum of evidence against the defendant. Eyewitness testimony is usually only a part of that broad spectrum. Criminologist Ebbe Ebbesen maintains that police and prosecutors "weed out" most unreliable witnesses while others disqualify themselves by expressing doubt about their own

perceptions. These factors help prevent convictions of innocent defendants from mistaken eyewitnesses.

The Brain Is Not a VCR

Eyewitness testimony is powerful because most people believe that the human mind is able to record and store every detail of the events we experience. They believe that these permanently recorded memories, thoughts, and impressions can be retrieved, even from realms of the forgotten and the subconscious. In fact, says psychologist Lofthus, "human memory is far from perfect or permanent and forgetfulness is a fact of life."

Most scientists agree that memories are formed when neurons form connections between brain cells. According to James McClelland, a Pittsburgh brain researcher, "Each neuron represents a little bit of memory," just like a computer holds information in bytes of electronic coding. These bits of information are channeled from the eyes, ears, and other senses to various parts of the brain. Here, the connected neurons are stored in cerebral compartments that can hold as much as 1 quintillion separate memory bits.

Beyond providing a strong basis for arrest, eyewitness testimony has great impact in the courtroom.

These storage compartments are constantly being rearranged by a part of the brain called the limbic system. Like a neurological file clerk, the limbic system tries to "make sense" out of our memories by adding new data and tossing out old or confusing information. As Lofthus describes this process, "Every time we recall an event, we must reconstruct the memory and with each recollection the memory may be changed...Thus our representation of the past takes on a living, shifting reality."

Our brains may hold on to certain peak memories. But between the peaks, our brains fill in the gaps. Dr. Marcel Mesulam, professor of neurology and psychiatry at Northwestern University observes that "your brain may be re-creating something very vivid. But that doesn't prove that what was being re-created was true."

This neural recollection process takes on particular significance when eyewitnesses to crimes are asked to recall their experience for police investigators, lawyers, or a judge and jury. Most witnesses want to help. Both investigators and witnesses want to see justice served. No one wants to held responsible for the wrongful conviction of an innocent person. In short, most witnesses and criminal investigators have the same goals. In most cases, these common goals can create an effective collaboration to identify a suspect. But these same goals, combined with the fallibility of memory, can create an margin for error in the identification of a suspect.

Psychologist G.H. Wells, an expert in methods used to secure eyewitness testimony, describes the process this way: "The investigator's knowledge of which person...is the suspect creates a dynamic situation in which the investigator can influence the eyewitness to choose the suspect." For example, if the eyewitness makes a tentative choice, the investigator can create a false sense of confidence by confirming the choice. "The eyewitness then becomes convinced that the identification was correct," contends Wells, "and a false certainty begins to take hold."

Lofthus explains the development of false certainty by claiming that "the more people think about an event from the past, the more confident they become in their memories. The problem is that they get more confident in their inaccurate memories as well as their accurate ones."

Creating a Margin for Error

Regardless of the possibility for error, eyewitness testimony can be extremely helpful in determining innocence or guilt in criminal cases. Despite assertions that traumatic events can destroy memory, psychologists Ofshe and Watters from the University of California point to a study done of children who witnessed the murder of a parent. "Many distorted the memory," they say, "but not one [child] lost it entirely." Sometimes, a victim's eyewitness testimony is the only evidence available.

Wells suggests that "[a]lthough...people have faulty beliefs on how memory works and...tend to over-believe eyewitness identifications, this does not mean that they assume that all such identifications are valid."

Wells quotes the U.S. Supreme Court, who, in the 1972 case of *Nell v. Biggers*, ruled that not all testimony is created equally valid or invalid. In contemporary justice settings, most instructions to the jury include a warning that eyewitness testimony can be subject to error.

Wells goes on to suggest several methods that police and prosecutors, judges, and lawyers can use to "greatly reduce the justice system's role in contributing to false identifications." Wells' methods attempt to limit the

influence that the investigator has over the eyewitness. They include:

1. informing the eyewitness that the culprit may *not* be in a photo spread or suspect lineup;
2. ensuring that all individuals participating in the lineup or photo spread resemble one another, so that the eyewitness does not choose someone who merely stands out;
3. having photo spreads and lineups conducted by someone who does not know who is the suspect; and
4. stopping reinforcing witnesses' choices by prompting (e.g., "How about number four?"), challenges (e.g., "Are you sure that's him?"), or congratulations, (e.g., "You're right. That's our suspect.").

Another technique for reducing error in eyewitness testimony has been developed by two professionals operating within the Israeli police system. This new technique, still in its experimental stages, uses computer technology to present a large collection of photos to an eyewitness.

Instead of viewing a limited number of faces chosen by criminal investigators, the eyewitness chooses his or her own "rogue's gallery" of suspects from a computerized photo collection. The eyewitness is not forced to choose a single suspect. Instead, the court is notified as to how many faces were viewed by the eyewitness, whether the suspect appeared among the witness's choices, and how many faces were chosen (the fewer the faces, the stronger the evidence). This technique avoids an "all or nothing" attitude on the part of both investigators and eyewitnesses.

Police lineups and other methods of suspect identification are essential tools of justice. Most inaccuracies in eyewitness testimony are unintentional and many are detected in the courtroom, but the consequences of mistaken identity can be disastrous for the accused. Our justice system is not, and cannot be, perfect. But there is always room for improvement. Advances in technology and in our understanding of how the human mind functions can only help to serve justice in the future.

For Discussion and Writing

1. Why do you think eyewitness testimony is so powerful?
2. What factors might cause eyewitnesses to make mistakes?
3. What kinds of interactions between criminal investigators and eyewitnesses might create a margin for error in the identification of a suspect?
4. Describe some methods that criminologists have developed to help eyewitnesses accurately choose or eliminate suspects. Do you think they are effective? Why or why not?

A C T I V I T Y

In this activity, students conduct their own experiments on the accuracy of eyewitness accounts.

1. Form small groups of 3-4 students each. Each group should make up a brief skit that the class will witness and describe.
2. When all groups have created and practiced, each group should present its skit to the class as a whole. Each student should write a brief description of the skit and its participants.
3. Students read their descriptions aloud and compare the results.

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The
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Separating Church and State

Thomas Jefferson, James Madison, and most of the other founders favored the separation of church and state. Today, though, we are still debating where to draw the line separating church and state.

Unlike his fellow Virginians Thomas Jefferson and James Madison, Patrick Henry wanted to make Christianity the official state religion. (Corbis-Bettmann)

Shortly before the outbreak of the Revolutionary War, an evangelical Baptist preacher named "Swearing Jack" Waller attempted to lead a prayer meeting without a license from the colonial government of Virginia. Because he was violating Virginia's religion laws, "Swearing Jack" was jerked off his platform by sheriff's men who proceeded to beat his head against the ground. The sheriff then lashed him 20 times with a horsewhip.

US GOVERNMENT

At this time, the Church of England (also known as the Anglican Church) was the established religion of Virginia. This meant that the Anglican Church was the only officially recognized church in the colony. Virginia taxpayers supported this church through a religion tax. Only Anglican clergymen could lawfully conduct marriages. Non-Anglicans had to get permission (a license) from the colonial government to preach.

Although the Anglican Church was the sole established church in all five Southern colonies, other protestant Christian churches became established in the towns of the Northern colonies of New York, Massachusetts, Connecticut, and New Hampshire. Each town chose by majority vote one Protestant church to be supported by taxpayers. In these colonies, one church usually predominated. For example, in Massachusetts almost all towns selected the Congregational Church since the majority of people living in the colony belonged to that faith.

Thus, on the eve of the Revolutionary War, nine of the 13 colonies supported official religions with public taxes. Moreover, in these colonies, the government dictated "correct" religious belief and methods of worship. Religious dissenters, like "Swearing Jack," were discriminated against, disqualified from holding public office, exiled, fined, jailed, beaten, mutilated, and sometimes even executed. Only Rhode Island, Pennsylvania,

(Continued on next page)

Separating Church and State

This edition of *Bill of Rights in Action* looks at issues surrounding the separation of church and state. The first article focuses on the development of this doctrine in the United States. The second article explores how the ancient Roman Empire, a multi-ethnic, multi-religious society, handled religious diversity. The final article examines a recent U.S. Supreme Court case involving state aid to parochial school students.

U.S. Government: Separating Church and State

World History: Religious Tolerance and Persecution in the Roman Empire

U.S. Government: Should Government Aid Students Attending Parochial Schools?

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New Jersey, and Delaware did not have a system linking church and state. After the Revolution, leaders like Jefferson and Madison worked to ensure freedom of religion for all citizens of the new nation.

The Struggle for Religious Freedom in Virginia

During the Revolutionary War, all Southern states ended the Anglican Church's monopoly on religion, but they continued to financially support Christian churches in general. Virginia, however, moved to separate church and state after the Revolution.

A year after Thomas Jefferson drafted the Declaration of Independence, he wrote a bill on religious freedom for his home state of Virginia. In writing these documents, Jefferson was strongly influenced by the 17th century English philosopher John Locke. In 1689, Locke had argued that "the church itself is a thing absolutely separate and distinct from the commonwealth [government]." Taking this idea from Locke, Jefferson proposed that Virginia end all tax support of religion and recognize the natural right of all persons to believe as they wish.

Jefferson introduced his bill to the Virginia Assembly in 1779, but state lawmakers did not consider the matter of church and state until after the Revolutionary War. In 1784, another Virginia patriot, Patrick Henry, proposed making Christianity the established religion of Virginia. After failing to get the General Assembly to pass this proposal, Henry submitted another religion bill that called for a tax supporting all Christian churches in the state. Henry felt this would improve public morals, which he thought had declined during the Revolution.

Jefferson was strongly influenced by the 17th century English philosopher John Locke. In 1689, Locke had argued that "the church itself is a thing absolutely separate and distinct from the commonwealth [government]."

Should students be required to pray in public schools? Or does mandatory prayer violate the First Amendment? (Corbis-Bettmann)

Under Henry's bill, taxpayers could designate their tax payment to go to the Christian church of their choice. Henry's bill probably would have passed had not Jefferson's ally, James Madison, persuaded the General Assembly to delay voting until the following year (Jefferson was in Paris as U.S. ambassador to France).

During spring and summer of 1785, Madison worked to sway public opinion against Henry's religious tax bill. In a widely circulated petition against the bill, Madison declared that it was the natural right of all persons, even atheists, to be left to their own private views of religion. He argued that throughout history "superstition, bigotry, and persecution" have accompanied the union of religion and government. He also asserted that Christianity did not need the support of government to flourish.

Baptists and other evangelical religious groups in Virginia also circulated petitions against the religious tax bill. They viewed this bill forcing government into church affairs and threatening religious liberty. Overwhelmed by the negative public response to Henry's bill, the General Assembly did not even bring it up for a vote. Instead, Madison reintroduced Jefferson's bill, which called for severing all ties between the state of Virginia and religion. Jefferson's "Virginia Statute for Religious Freedom" was passed on January 19, 1786. This was the first

time that a government anywhere in the world had acted to legally separate religion from the state.

"A Wall of Separation"

As written in 1787, the U.S. Constitution did not mention religion except to prohibit any religious requirement for holding federal office. When the first Congress met in 1789, Madison proposed a series of amendments to the Constitution guaranteeing the rights of Americans. The opening words of the First Amendment declared that, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ." The First and other nine amendments, called the Bill of Rights, were ratified in 1791 as part of the Constitution.

The Bill of Rights originally only limited acts of the federal government. Thus, the First Amendment's prohibition against laws "respecting an establishment of religion" did not affect what states could do. Consequently, seven states (including newly admitted Vermont) continued to assess taxes in support of Christian churches. State laws also frequently required public officeholders to be Christians, denied the vote to non-Christians, and enforced the Christian Sabbath.

When Thomas Jefferson became president in 1801, he tried to maintain a strict separation between government and religion in federal matters. He was criticized for refusing to proclaim a national day of prayer and thanksgiving as presidents George Washington and John Adams had done before him. Jefferson wrote a letter to the Baptists of Danbury, Connecticut, to explain his views on religion. In this letter, he quoted the First Amendment's clause prohibiting Congress from passing laws establishing religion. Jefferson then remarked that this establishment clause built "a wall of separation between Church and State."

Where Should the Line Be Drawn?

Gradually, all states followed the lead of Virginia in ending religion taxes. Massachusetts in 1833 was the last of the original 13 states to do this. But some states still involved themselves with religion. For instance, several states made recitation of the Lord's Prayer and devotional Bible readings mandatory in public schools.

Not until the 20th century did the U.S. Supreme Court apply most of the Bill of Rights to the states. The Supreme Court has ruled that the 14th Amendment

Some constitutional experts. . . take the position that government may aid all religions or religion in general as long as no groups suffer discrimination.

(ratified in 1868) requires states to guarantee fundamental rights such as the First Amendment's prohibition against the establishment of religion. This means that states, like the federal government, can "make no law respecting an establishment of religion."

In 1947, the Supreme Court attempted to define the "establishment of religion" clause of the First Amendment. Justice Hugo Black, writing for the court, held:

> Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. . . . In the words of Thomas Jefferson, the clause against the establishment of religion by law was intended to erect a "wall of separation between Church and State." [*Everson v. Board of Education* (1947).]

Some constitutional experts dispute Justice Black's definition of the establishment clause. They argue that "an establishment of religion" only prohibits the federal and state governments from supporting a national church or preferring one religion over others. In a 1985 case, current Supreme Court Chief Justice William Rehnquist stated in a *minority* opinion, "The Establishment Clause did not require government neutrality between religion and irreligion [no religion] nor did it prohibit the federal government from providing nondiscriminatory aid to religion." [*Wallace v. Jaffree* (1985).] Rehnquist and others take the position that government may aid all religions or religion in general as long as no groups suffer discrimination.

The Supreme Court still struggles today over exactly where to draw the line separating church and state. On the one hand, the Supreme Court has struck down state laws providing for organized prayer in the public schools. But the court has also upheld laws that exempt churches from paying taxes.

For Discussion and Writing

1. How were Baptists and other dissenting religious groups discriminated against during colonial times?
2. In what ways did John Locke, Thomas Jefferson, and James Madison agree on separating church and state?
3. How do Justices Black and Rehnquist differ over the meaning of the establishment clause in the First Amendment? Whom do you agree with? Why?

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A C T I V I T Y

Drawing the Line Between Church and State

A. Form small groups to discuss the following laws and government acts concerning church and state. Each student should keep a record of his or her opinions on each.

Do you agree or disagree that . . .

1. States should be allowed to enact religion taxes with proceeds going to the religion each taxpayer chooses?
2. Churches should be exempt from paying taxes?
3. Federal aid should be granted to religious colleges, charities, and hospitals for secular (non-religious) purposes?
4. States should be allowed to require prayers or other religious exercises in the public schools?
5. The president should be allowed to proclaim a national day of prayer?
6. Cities should be allowed to permit churches to place nativity scenes in public parks at Christmas time?

B. Every student should review his or her opinions on the laws and acts and then choose which position below best reflects his or her opinion on the separation of church and state.

Establisher: By majority vote, states should be permitted to establish a single official religion supported by all taxpayers.

Accommodator: Federal and state governments should be permitted to support and aid all religions as long as none are favored or discriminated against.

Partial Separatist: Federal and state governments should be permitted to grant aid to religions for only certain secular purposes (such as teaching remedial reading and math).

Absolute Separatist: Neither federal nor state governments should become involved with religion in any way.

C. After making a choice, students should regroup according to their position and hold a class discussion on their views of separating church and state.

D. Finally, each student should write a persuasive letter to one of the article's historical figures who differs with the student's position on separating church and state. Establishers should write to "Swearing Jack" Waller. Accommodators should write to James Madison. Partial Separatists should write to Thomas Jefferson. Absolute Separatists should write to Patrick Henry.

The purpose of the letter is to try to convince the historic figure to agree with the student's position.

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Religious Tolerance and Persecution in the Roman Empire

The challenge of forging a society from diverse peoples is not unique to modern America. Almost 2,000 years ago, the Roman empire spread onto three continents and held more than one-fifth of the Earth's population. Rome allowed its diverse peoples to practice their own religions as long as they also made offerings to Roman gods. People of most religions agreed to this arrangement. Jews and Christians couldn't.

The Roman Empire surrounded the Mediterranean. It extended west to the Atlantic Ocean, north to Britain, south to the Atlas Mountains, and east to Mesopotamia. (Corbis-Bettmann)

Today, the area of the ancient Roman empire holds more than 25 separate nations. At its peak, the Roman empire reached north to Britain and south halfway up the Nile River. Rome controlled all the land surrounding the Mediterranean, making the large sea, in effect, a "Roman lake." Its conquered peoples represented many different cultures and spoke a multitude of languages, such as Greek, Celtic, Aramaic, Egyptian, Numidian, Berber, and Phoenician. Each had its own religion, which it held sacred.

WORLD HISTORY

Rome won its empire by force. But to control such a vast empire, it needed to win the cooperation of its subject peoples. It did this in various ways. Instead of punishing conquered nations, Rome often treated them as allies, encouraging them to take part in the glory and wealth of building the empire. To the more primitive peoples in Gaul (France), Britain, and Spain, Rome offered an advanced civilization with a written language (Latin), a legal system, and well-run cities. The people in the eastern part of the empire—Greece, Asia Minor, Middle East, and Egypt—had already been deeply influenced by Greek civilization. Rome recognized and honored this civilization, allowing Greek to continue as the language of educated people in this part of the empire. To all its subject peoples, Rome granted religious toleration as long as they also honored Roman gods.

The Roman religion included many major and minor gods headed by the sky god, Jupiter. In Roman belief, a sort of contract existed between the people and their gods. In exchange for the Romans practicing the required religious rituals, the gods would ensure prosperity, health, and military success.

Like the Romans, almost all the conquered peoples were polytheistic. They worshiped their own gods, who they thought protected them. Since they believed other peoples had their own gods, they found it relatively easy to take part in festivals celebrating Roman gods. It was simply a matter of paying respect to the Romans.

In return, the Romans built temples and made animal sacrifices for the conquered peoples' gods. In fact, at various times other peoples' gods became wildly popular among Romans. The Romans actually identified the Greek gods with their own. Jupiter and Zeus, for example, were viewed as the same god. When Greco-Roman gods didn't meet their needs, many Romans joined mystery cults from the east. The cult of Isis, an Egyptian goddess, swept the empire at the beginning of the first century. The cult of Mithras, the Persian sun god, proved particularly popular to soldiers (and useful to the empire because it idealized courage).

The Romans generally tolerated these cults, but there were exceptions. Crowds celebrating Dionysus, a

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Greek god associated with wine and drunkenness, grew so frenzied that Rome suppressed the cult for a while. But within a few years, Rome relented and allowed it as long as no more than five worshiped at any one time. When a priest from the cult of Isis seduced an innocent Roman woman, Roman Emperor Tiberius ordered the temple destroyed and its priests executed. But the next emperor once again permitted the cult.

The religions that Rome had the most problems with were monotheistic—Judaism and Christianity. Because these religions believed there was just one god, they prohibited worshiping other gods. Their members refused to make offerings to Roman gods or take part in Roman religious festivals, which Rome considered a matter of showing loyalty. These religions tested Roman tolerance.

Rome's Treatment of the Jews

In 63 B.C., the Romans conquered Judea, the land of the Jews. Rome immediately recognized it had a problem because the Jews refused to pay homage to Roman gods. Rome gave in and exempted Jews from this requirement. Rome did this in part because the Jews had helped Roman general Julius Caesar win an important battle several years earlier. Soon Rome recognized Judaism as a legal religion, allowing Jews to worship freely.

The religions that Rome had the most problems with were monotheistic—Judaism and Christianity.

But Rome viewed the Jews with suspicion and persecuted them on several occasions. One of the most serious conflicts between Rome and the Jews began in Judea in A.D. 66 when Nero was emperor. The Roman governor of Judea unwisely decided to confiscate a large sum of money from the treasury of the Great Temple in Jerusalem. He claimed he was collecting taxes owed the emperor. Rioting broke out, which Roman soldiers ruthlessly suppressed. This, in turn, enraged a nationalistic group of Jewish revolutionaries, called Zealots, who massacred the Romans in Jerusalem and attacked Roman troops elsewhere in the Roman province.

Nero sent three legions to put down the rebellion. By summer of the year 68, Rome had restored its control over most of the province. Two years later, the Romans retook Jerusalem and destroyed the Great Temple, the center of the Jewish religion. Fighting continued for a few more years until the Zealot fortress at Masada fell.

Following this revolt, Rome tried to prevent further uprisings by expelling Jews to different parts of the empire. But Jews rose in two more unsuccessful rebellions. The first took place in 115–116 in several Mideast cities. The second took place in Jerusalem in 131 when Emperor Hadrian announced he would build a shrine to Jupiter on the site of the destroyed Great Temple. After crushing these challenges to their authority, the Romans dispersed Jews throughout the empire. But Judaism remained a legal religion and Jews continued to enjoy religious privileges.

Initial Attitude Toward Christianity

Rome had good reasons to tolerate the Jewish religion. First, it was a well-established religion with a long history. Most important, Rome wanted to keep the people of Judea from revolting. Neither of these reasons applied to Christianity. This new offshoot of the Jewish religion had little support at first among the people of Judea. In fact, many Jews would have been pleased if Rome had suppressed it.

Yet when Rome first became aware of Christianity around A.D. 30, it did nothing to stop it. Thinking this sect might weaken the always bothersome Jewish religion, Emperor Tiberius asked the Senate to legalize the Christian faith and declare Christ a Roman god. But the Senate refused. Instead, it pronounced Christianity to be an "illegal superstition," a crime under Roman law.

Although Christianity was now officially illegal, Tiberius still hoped this new religious sect would further his goal of pacifying the empire. As a result, he ordered Roman officials not to interfere with the new religion, a policy that lasted about 30 years until the time of Nero.

Nero's Persecution

On the night of July 18, A.D. 64, a fire began in the area of the Circus Maximus, the great arena in Rome for chariot races and games. The fire spread quickly and for six days consumed much of the city, including Emperor Nero's palace.

Immediately, the rumor spread that Nero himself had caused the great fire to clear space for a new palace. He was also accused of playing the lyre (a stringed instrument like a small harp) while watching the spectacular conflagration. Although he probably did play the lyre at some point while watching the fire, he was almost certainly not responsible for it. Nevertheless, the suffering people of Rome believed him guilty.

Nero, lyre in hand, watches Rome burn. Many Romans blamed Nero for the catastrophe. Nero escaped the wrath of Roman mobs by blaming the fire on Christians, who he mercilessly persecuted. (Corbis-Bettmann)

Fearful that Roman mobs would turn on him, Nero cast about for a scapegoat to blame for the fire. He pointed to an unpopular small religious minority, the Christians.

Christians made an easy target for scapegoating. The common people of Rome believed rumors about Christians. Some thought Christians practiced cannibalism because the sacrament of the Eucharist called for believers to symbolically eat the flesh and blood of Christ. Others believed that Christians practiced incest because they preached loving their brothers and sisters. Many believed Christians hated humanity because they kept secrets and withdrew from normal social life. Many pagans feared that the gods would become angry and punish the Roman people since Christians refused to participate in the old religious rituals. These fears and rumors helped Nero shift public opinion to blaming the Christians rather than him for the great fire.

Since the Christian religion was still illegal, it was easy to order mass arrests, trials, and executions. The Christian martyrs suffered horrible deaths. Roman historian Tacitus described Nero's methods of execution:

> Dressed in wild animal skins, they were torn to pieces by dogs, or crucified, or made into torches to be ignited after dark as substitutes for daylight. Nero provided his Gardens for the spectacle, and exhibited displays in the Circus, at which he mingled with the crowd—or stood in a chariot dressed as a charioteer.

For many years, Christians lived with the uncertainty that another persecution could erupt at any time. In 110, Emperor Trajan attempted to reach a compromise between the growing Christian minority and Roman pagans who demanded that the illegal religious sect be destroyed. Although Trajan authorized arresting Christians, he prohibited general searches to seek them out and ordered Roman officials not to actively interfere with Christian gatherings.

For more than 100 years, Christians preached and practiced their faith openly with little obstruction from Roman officials anywhere in the empire. Rome's excellent system of roads helped Christians spread the gospel throughout the empire. And the Christians' openness to people from all groups and classes helped them gain many converts.

But in 250, Emperor Decius attempted to revive the Roman pagan religion and persecute Christians. Many Christians perished, but when Gallienus became emperor, he halted the persecution. Gallienus then went one step further by recognizing Christianity as a legal religion for the first time. By stopping the oppression of this minority religion, Gallienus hoped to bring religious peace to the empire.

Christian Bloodbath

For almost 40 years, the legalized Christian Church flourished in the Roman empire. Then, in 297, Emperor Diocletian initiated one last terrible Christian persecution.

Diocletian had come to power at a time of crisis. Prices of goods were climbing rapidly, German tribes threatened the western part of the empire, and the Persian empire was attacking in the east.

Diocletian moved boldly. He set price controls. He doubled the size of the army. To govern the empire

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more easily, he broke it into two parts—the Greek-speaking east and the Latin-speaking west.

Suspicious of the loyalty of Christians to the Roman state, Diocletian started persecuting them. He demanded that all Christian soldiers resign from the Roman army. He forbade gatherings for Christian worship and ordered the destruction of churches and sacred writings. Christian members of the government were tortured and executed.

Other edicts followed when Christian uprisings took place in the eastern parts of the empire where Christianity was strongest. Bishops and priests were arrested, tortured, and martyred. In 304, Rome decreed that all Christians sacrifice to the pagan gods or face death.

Rome's excellent system of roads helped Christians spread the gospel throughout the empire.

Following Diocletian's retirement in 305, a civil war broke out to determine his successor. It raged on for almost a decade. Even so, the persecution of Christians continued. Galerius, Diocletian's handpicked successor, hated Christians and organized a war of extermination against them in the eastern empire. Christians were mutilated, burned alive, and crucified. Hundreds of Christian men, women, and children were forced to labor in government mines. Crowds in Roman arenas shouted, "Let there be no Christians!"

Galerius grew disheartened when he saw that his efforts had failed to stamp out the Christian religion. Dying of cancer that was literally rotting his body, Galerius suspended the persecution in 311. He then pleaded for Christians to pray for his health. But he died, and the oppression resumed.

Constantine, who was fighting for control of the western empire, had a vision that he would win an important battle if he fought under the sign of the cross. He quickly had artisans mark his soldiers shields with crosses and sent them into battle. When they won, Constantine became a strong supporter of Christianity.

Constantine emerged from the civil war as the new emperor. In 313, he proclaimed that every person was free "to follow the religion which he chooses." Under Constantine, Christianity rapidly became the dominant religion.

In 395, Emperor Theodosius made Christianity Rome's new state religion. Christians, who had so long been on the defensive, turned to attacking the pagan religion. They closed temples and banned sacrifices to pagan gods. They even transformed some pagan celebrations into Christian ones. For example, the church changed the birthday of the sun god on the 25th of December into the celebration of the birth of Christ.

For Discussion and Writing

1. In what ways were Romans tolerant of religions?
2. Why did the Romans single out Christians to persecute from time to time?
3. The founders of the United States prohibited making any religion the official state religion. Do you think such a prohibition would have helped the Roman empire? Explain.

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ACTIVITY

Diversity of Religions in Modern America

Unlike ancient Rome, the U.S. Constitution prevents government involvement in religious affairs. This has allowed many different religions to flourish in America free from persecution. In this writing activity, students find and report on a religion in their community. Each student should:

1. Research and make a list of at least five different religions in the community. (Explain how you found out that each religion exists in your community.)

2. Make a report on one religion from your list. It should not be a religion that you are familiar with. Your report should include information on the religion's basic beliefs, practices, its founders, holidays, and how it developed. Conclude your report with a paragraph on why religious toleration is an important value in American society.

After all class members present their reports, the class should count how many religions it discovered in the community. Debrief by holding a discussion on why religious toleration is important.

Should Government Aid Students Attending Parochial Schools?

Although the courts have upheld the principle of separation of church and state, they have sometimes found it difficult to apply. This has been especially true in the area of aid to students attending religious schools.

Does spending tax dollars to educate remedial students in parochial schools entangle government in religion? (Andrew Costly/CRF file photo)

When members of the first Congress wrote in the First Amendment that "Congress shall make no law respecting an establishment of religion," they had two important things in mind. First, they wanted to prevent the government from forcing anyone to support a religion or to worship in a certain way. Just as important, writers of the First Amendment also wanted to keep government from meddling in the affairs of churches.

Because the First Amendment forbids "an establishment of religion," courts have ruled that federal and state governments may not **directly** aid religion. But court interpretations have not always been consistent when it comes to **indirect** aid. Today, the law remains unclear about the constitutionality of some government aid to students attending religious schools.

U.S. GOVERNMENT

Government Aid and Parochial Schools

In 1947, the U.S. Supreme Court ruled that the First Amendment's establishment of religion clause did not allow federal and state governments to "pass laws which aid one religion, aid all religions, or prefer one religion over another." [*Everson v. Board of Education.*] But the Supreme Court has gone on to rule that some forms of government aid to religious schools do not violate the establishment clause. These include government-funded bus transportation and non-religious textbooks for students enrolled in parochial (religious) schools.

In 1971, the Supreme Court decided that it violated the establishment clause for a state to help pay salaries of Catholic school instructors who taught secular (non-religious) subjects like math and science. In this case, *Lemon v. Kurtzman*, the court reasoned that, when the state paid the salaries, the Catholic Church could use the savings to pay for its purely religious purposes. Thus, the state ended up aiding a religion.

In the *Lemon* case, the Supreme Court formulated guidelines for determining when an act of government violated the establishment clause. According to the so-called "*Lemon* test," any government act involving religion must meet all three of the following requirements to be constitutional under the First Amendment:

1. The government act must have a legitimate secular purpose.
2. The main effect of the government act must neither advance nor inhibit religion.
3. The result of the government act must not excessively entangle government with the affairs of religion.

Using the *Lemon* test in 1973, the Supreme Court decided that a state could not reimburse parents for their tuition payments to parochial schools. The court held that the reimbursements violated the establishment clause since they aided the primary purpose of parochial schools, which is to advance religion. Consequently, the reimbursements failed to satisfy the second part of the *Lemon* test. [*Committee for Public Education and Religious Liberty v. Regan.*]

Public Teachers in Parochial Schools

Title I of the 1965 Elementary and Secondary Education Act provided federal funds for remedial teaching of educationally deprived children from low-income families. This funding was made available to help students in both public and private schools, including those operated by religions. To satisfy the First Amendment's establishment clause, Congress required that all funds go to public school systems, which would then be responsible for

remedial instruction in both public and parochial schools.

Starting in 1966, New York City set up remedial reading, math, and other services at parochial schools. About 20,000 disadvantaged students, most enrolled in Catholic schools, were served by the federal Title I program.

All Title I teachers and other educational professionals worked for public schools and volunteered for extra duty and pay at parochial schools. Teachers were told not to include any religious instruction in their teaching even though they would be working in parochial schools. They were to avoid all unnecessary contact with the regular parochial school staff. The public school system supplied all teaching materials. Even religious symbols were removed from Title I classrooms. Finally, Title I teachers were monitored by public school supervisors, who conducted at least one unannounced classroom visit per month. The purpose of this monitoring was to ensure that the federally funded remedial teaching did not aid religion.

Today, the law remains unclear about the constitutionality of some government aid to students attending religious schools.

Twelve years after the Title I program began in New York City parochial schools, a group of taxpayers filed a lawsuit in federal court claiming that the use of tax money for this purpose violated the First Amendment's establishment clause. The case, *Aguilar v. Felton,* reached the Supreme Court in 1985. The court ruled, 5–4, that New York's Title I remedial program in parochial schools failed to pass the third part of the *Lemon* test and therefore was an establishment of religion.

Writing for the majority, Justice William Brennan stated that the need to monitor public school remedial teachers to make sure no religious instruction was taking place "inevitably results in the excessive entanglement of church and state. . . ." He concluded that the required teacher monitoring resulted in a continuing governmental intrusion into the operation of religious schools. Writing in dissent, Justice Sandra Day O'Connor argued that there was no reason to even have such a monitoring system. In her opinion, professional public school teachers would hardly start teaching religion simply because they were working for an hour or so in parochial school classrooms.

To try to satisfy the Supreme Court's decision in the *Aguilar* case, the New York City Board of Education provided remedial instruction to parochial students in classrooms separated from their schools. Most often, this involved marching students to a mobile instructional vehicle parked outside the school. Aside from the inconvenience of moving students (especially small children in bad weather), the price of leasing classrooms cost New York about $15 million per year ($100 million for all school districts in the nation). This money was deducted from the city's Title I funds, which were earmarked for remedial teaching.

Since 1985 when the *Aguilar* case was decided, several Supreme Court decisions put into question the basic assumptions that Justice Brennan used in writing his majority opinion. One case decided in 1993 concluded that a sign-language interpreter paid with public funds could assist a deaf student in his classes at a religious school. The court ruled that in this situation there was no need to monitor the interpreter. [*Zobrest v. Cataline Foothills School District.*]

In 1995, 10 years after the *Aguilar* decision, the New York Board of Education, parents of parochial students, and others tried to reopen the case. These petitioners contended that the *Aguilar* decision made remedial education for parochial students too costly. They also argued that in light of recent Supreme Court decisions, the 1985 *Aguilar* ruling was "no longer good law." The taxpayer opponents, however, argued that placing Title I teachers back into parochial schools would likely result in them aiding the religious mission of those schools.

The Supreme Court followed an unusual procedure to reconsider the *Aguilar* decision and in June 1997 overturned it. Writing for the 5–4 majority, Justice Sandra Day O'Connor agreed with the New York School Board and parents that recent Supreme Court decisions made it clear that there was no need for the state to closely monitor Title I teachers working in parochial schools. Without this state intrusion going on, the issue of "excessive entanglement of church and state," on which the *Aguilar* case was based, almost disappeared.

In a dissenting opinion, Justice David Souter argued that the government-funded remedial instructors, whether teaching inside or outside parochial schools,

enabled those schools to use more of their funds for religious purposes. This was, in his opinion, government aid to advance religion and a violation of the First Amendment's establishment clause. [*Agostini v. Felton.*]

The closeness of the *Aguilar* and *Agostini* cases indicates that the issue of government aid to parochial school students remains far from settled.

For Discussion and Writing

1. What two concerns did the framers of the First Amendment have in mind when they prohibited laws "respecting an establishment of religion"?
2. What is the *Lemon* test? Do you think it should be used? Why or why not?
3. Why did Justice Brennan conclude that New York City's Title I program in the parochial schools was an "excessive entanglement of church and state" in violation of the First Amendment? Do you agree? Explain.
4. Do you agree or disagree with the dissenting opinion of Justice Souter in the *Agostini* decision? Why?
5. Do you think it is a good idea for tax dollars to be spent at parochial schools? Why or why not?

For Further Reading

Freedom Forum First Amendment Center. http://www.fac.org [for Supreme Court decisions and articles analyzing First Amendment issues.]

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ACTIVITY

The *Lemon* Test

Divide the class into five groups, each representing the U.S. Supreme Court. Each court will discuss a different question concerning aid to parochial school students and rule on its constitutionality.

1. The justices of each court should first review the *Lemon* test.
2. Each court should use the *Lemon* test to discuss and decide on an answer to one of the following constitutional questions:
   a. May parochial school field trips to art museums, businesses, and government agencies be funded with public tax money?
   b. May a blind student use a federal vocational education grant to attend a religious college to become a pastor?
   c. May parents be granted a government voucher to help pay tuition for their children at the school of their choice including any religious school?
   d. May parents of parochial school students be allowed to claim a tax deduction for the cost of Bibles and other religious educational materials?
   e. May federal education funds be used to pay parochial school instructors to teach after-school remedial classes?
3. After reaching a majority decision on their question, justices of each court should explain to the rest of the class their ruling in terms of the three requirements of the *Lemon* test.

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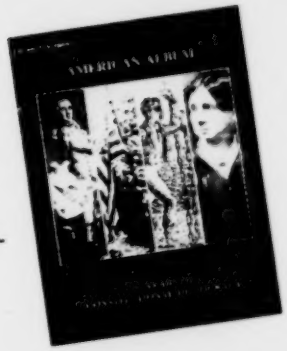

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The
BILL OF RIGHTS IN ACTION

CONSTITUTIONAL RIGHTS FOUNDATION WINTER 1998 VOLUME 14 NUMBER 1

The Kennewick Controversies

On July 28, 1996, two young college students, Will Thomas and Dave Deacy, were wading in the Columbia River near the town of Kennewick, Washington. They had come to watch a hydroplane race. Near the bank of the river, Thomas spied what looked like a smooth, round rock. He picked it up for a closer look and discovered he was holding a human skull.

A plaster cast of the Kennewick Man skull. Note the narrow face and prominent jaw. (AP/Wide World Photo)

Thinking that they might have discovered the body of a recent murder victim, the two young men notified the county sheriff. Soon the Kennewick police were on the scene and discovered more bones. They called the county coroner and a local anthropologist, James Chatters, to help investigate. It soon became clear that the remains had been in the earth for some time—the bones showed deep discoloration and were encrusted with soil. Because the skull showed features common to Europeans, a long narrow face, receding cheek bones, a high chin and a square jaw, Chatters began to think that they had discovered the skeleton of an early pioneer.

U S GOVERNMENT

Because the bones were found on federal land, Chatters applied for and received a permit to excavate the site. He returned to the river bank several times and recovered more bones, laying them out in his basement for further study. The pelvis demonstrated that the skeleton belonged to a man. The length of the leg bones showed that he had been 5 feet 9 or 10 inches tall. Teeth and bone formation indicated that he died when he was between 40 and 55 years old. Chatters also discovered a spear or arrow point lodged in the man's pelvis. The wound had healed over and was not the cause of death. It reinforced Chatters' belief that the Kennewick skeleton belonged to an early pioneer, who might have survived a battle with Native American Indians. Then the picture began to change.

Chatters shared the bones with another anthropologist, Dr. Catherine MacMillan. Although she agreed with many of Chatter's conclusions, including that the bones were of a European type, she believed that the spear point might be very old. It seemed to be like those made during the Cascade period in ancient America, sometime between 4,500 and 9,000 years ago. This raised a serious question. Most scientists believe that Europeans did not arrive in the new world before 1000 A.D when the Vikings began to explore the continent. How could a

(Continued on next page)

Culture Clash

In a free and diverse society such as ours, conflicts are inevitable. Clashes can erupt between economic classes, science and religion, or ethnic groups. Often the courts are called upon to intervene. In this issue of *Bill of Rights in Action,* we examine some current and historical controversies that have led to court actions.

U.S. Government: The Kennewick Controversies

World History: Witch Hunt

U.S. Government: The Battle Over Proposition 187

This issue of the Bill of Rights in Action *is made possible by a generous grant from the W.M. Keck Foundation*

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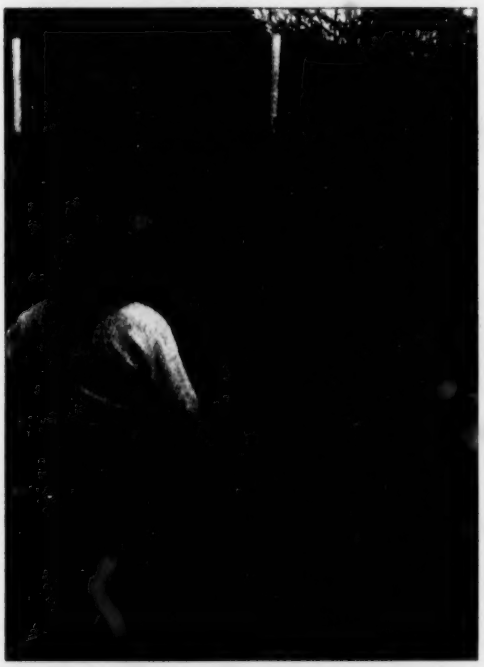
person with European characteristics get wounded by a projectile at least 2,500 years older?

To solve the puzzle, Chatters sent a small bone from the hand of the skeleton to the University of California, Riverside, for radiocarbon dating. All living matter contains a radioactive element called carbon 14. When the organism dies, this element begins to decay at a constant rate. By measuring the amount of carbon 14 left, scientists can tell how long ago the organism died. In this case, the test results showed that the Kennewick Man had been dead for up to 9,300 years. This dating made the skeleton one of the oldest ever found in North America.



Scientist Tom Stafford(left) and anthropologist Jim Chatters study a site near where the bones of Kennewick Man were discovered. (AP/Wide World Photos)

Maybe the bones were not those of a European, but belonged to a long-dead American Indian whose ancestors migrated to America as early as 10,000 years ago. But, another anthropologist, Grover Krantz of Washington State University, confirmed that the bones did not match any existing tribe in the area or any western Native American type.

The Legal Controversy

While the mystery of Kennewick Man began to grow, events took another turn. Before the scientists could conduct further studies, the U.S. Army Corps of Engineers took custody of the bones.

The corps was acting under the authority of a federal law called the Native American Grave Protection and Repatriation Act (NAGRPA). Among other things, this law requires federal agencies, in control of lands where human remains are found, to make a determination whether or not they are of Native American origin. If the remains are of Native American origin, the agency must notify the Indian tribe associated with the remains. Then, upon request of the Indian tribe, the remains must be returned to the tribe for burial according to its customs. Under the act, the tribe owns the recovered remains.

NAGRPA, enacted in 1990, was designed to correct a long-standing grievance of Native Americans. Ever since the 19th century, Indian burial sites throughout the United States had been plundered of human remains, sacred relics, and pieces of art. Some of the material ended up in private collections. But many items, especially skulls and bones, were sent to museums for study. Scientists used the remains to learn about the Indian populations of North America.

Many Native Americans were offended by these practices. They believed that the souls of their ancestors could not find peace unless their remains rested in proper graves. They believed that keeping the remains for study showed that white people did not respect Indian culture or practices. How would whites feel, they argued, if Native Americans dug up white cemeteries and kept the bones or put them on display? NAGRPA addressed these concerns. It also applied to federally funded museums, which were required to make an inventory of their collections, identify the source, and return items to the appropriate tribe.

The Army Corps of Engineers decided that this law applied to the Kennewick Man. It based its finding on the fact that the Kennewick bones were over 9,000 years old and were found on the traditional tribal lands of the Umatilla Indians. They reasoned that this was too old for the remains to have been

. . .the test results showed that the Kennewick Man had been dead for up to 9,300 years.

anything other than Native American. As a result, the corps notified several Washington state and northern Oregon tribes about the find, including the Umatilla Indians. The tribes demanded a halt to the study of the bones and asked that they be returned, some wanting immediate reburial. The corps seized the bones and stored them for the required 30-day waiting period for other claims as required by the law. During this time, the corps refused any further scientific study, nor would they permit the bones to be photographed.

The scientists who had been studying the remains became frantic. Much more work had to be done before they had any hope of uncovering the secrets of Kennewick Man. Appeals to the corps to allow further study failed. On October 16, 1996, to stop the delivery and burial of the bones, eight scientists, all employed by major universities or museums, filed a federal lawsuit. The suit asked the court to review the actions of the Corps of Engineers and for an order barring the delivery of the bones to the Native American groups. The suit also requested that the scientists gain access to the remains for further study.

Lawyers for the scientists argued that the Corps of Engineers had made a mistake in determining that Kennewick Man could be traced to any existing Indian tribe or group. The mere facts that the bones were old and found on tribal territory proved nothing, according to the scientists. In fact, the bones were too old to be related to the Umatilla or the other tribes, they argued, and only further study would reveal whether the bones are even those of a Native American within the meaning of the act. If the bones are not, argued the scientists, they have a right to study them.

Lawyers for the Corps of Engineers opposed the call for a restraining order. They argued that there was no need for one because the government had no immediate plans to deliver the remains to the tribes and would need more time to consider the various claims to the skeleton.

After a series of hearings, U.S. Magistrate Judge John Jelderks issued his ruling on June 27, 1997. He ordered the Corps of Engineers to conduct a new review of its actions concerning Kennewick Man and to provide a 14-day notice before transferring the remains. He also questioned whether the corps had acted too quickly and failed to consider all relevant information. He refused the scientists' request to study the bones, but ruled it could be raised again in the future.

Another controversy has re-emerged in the wake of finding the bones of Kennewick Man. It is a clash of values.

On a legal basis, the fate of Kennewick Man may rest on the language contained in NAGRPA. The act applies to "Native American" remains and artifacts. According to the act "Native American" means "of, or relating to, a tribe, people or culture that is **indigenous** to the United States." That is, did the tribe, people or culture originate in America?

This is a tricky question when it comes to peoples as old as Kennewick Man.

The Anthropological Controversy

Most scientists believe that the ancestors of Native Americans crossed over to North America by means of the Bering land bridge. It stretched from Siberia to Alaska some 12,000 years ago and is now covered by water. Migrating from Asia, these ancient wanderers were classified by scientists as of "Mongoloid" stock. So are the modern Chinese, Japanese, and Koreans. Because of many physical similarities, particularly relating to features on the skull, modern American Indians were also classified as Mongoloid.

In recent years, scientists have begun to reconsider these beliefs. Many now believe that the prehistoric migration to America was much more complex and may have taken place at different times and involved different peoples. A number of ancient American skeletons have been discovered that, like Kennewick Man, have non-Mongoloid features.

Scientists are divided about what this means. Some believe that the evidence is building to show that some of the earliest Americans were of Caucasoid stock. These people are related to those of Europe and the Middle East. Some scientists believe that the Caucasians were more widespread in Asia than previously thought and could have come over on the land bridge, perhaps in an early wave. According to this theory, the Caucasians mingled with various

Mongoloid groups and both became the ancestors of Native Americans.

Other scientists argue that Caucasian features do not prove that the skeletal remains are truly Caucasoid. They argue that the long heads and angular faces may have developed naturally in the Asian population and are not related to Caucasians at all. This would explain other groups, such as the Polynesians and the Ainu of Japan, who do not look like modern Asians and have some Caucasian characteristics.

Both groups of scientists believe that much more study is required before any of these questions can be settled. For them, Kennewick Man may provide an important piece to the puzzle.

Science versus Religion

Another controversy has re-emerged in the wake of finding the bones of Kennewick Man. It is a clash of values.

For scientists and many others in the modern world, the search for knowledge is supreme. For them, it is crucial that humans unlock the secrets of the past to better understand the present and future. For them, science provides the key.

For others, including the Umatilla Indians, religion is more important. According to Armand Minthorn, a religious leader of the Umatilla, his people believe that Kennewick Man is not a Caucasian, but a Native American. According to their elders, "Indian people did not always look the way we look today."

Based on his religious beliefs, Minthorn rejects the theory of a Bering land bridge or that American Indians originated in Asia. Citing oral histories that he claims go back 10,000 years, he believes Native Americans were created in North America.

He rejects the scientific argument that by stopping further study, the Indians will destroy evidence of their own history. "We already know our history. It is passed to us through our elders and through our religious practices."

For him, Umatilla religious beliefs forbid scientific testing on human remains and require that Kennewick Man be re-buried quickly. And for him, no compromise is possible.

Not all Native American leaders share Minthorn's views. Others believe that compromise is possible and have worked together with scientists to study the ancient people of America. In fact, several of the tribes involved in the Kennewick case are interested in a scientific study of the bones.

Still, it is unlikely that the controversies surrounding Kennewick Man will be resolved any time soon. Even when they are, an important question for our society will remain: When science and religious beliefs are in conflict, whose truths will prevail?

For Discussion

1. Why are the bones of Kennewick Man of scientific interest?
2. Should the NAGRPA law be applied to the bones of Kennewick Man? Why or why not?
3. What other science versus religion controversies are common in society today? How do they compare to the one in the reading?

For Further Reading

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Murphy, Kim, "Skeleton Embodies Debate on America's First People," *Los Angeles Times*, 8/13/1997.

Slayman, Andrew L., A Battle Over Bones, *Archaeology*, January/February 1997.

A C T I V I T Y

A Matter of Compromise

Imagine that you are part of a working group charged with proposing a compromise to the conflict in the Kennewick case. It is your job to come up with a plan that (1) provides assurance that any study of the Kennewick remains will be sensitive to the religious beliefs of Native Americans and (2) provide scientists with sufficient freedom and access to the remains for proper study.

1. Form groups of three to four students and review the reading.
2. Brainstorm and discuss various elements of the plan.
3. Draft and adopt a plan consisting of the best elements.
4. Share and discuss your plan with the class. Create a class plan incorporating the best elements proposed.

Witch Hunt

Thou shall not suffer a witch to live.
—Exodus 20, 18

It is 1645 in the County of Essex, England. At the jail in the town of Chelmsford, the following prisoners are delivered under indictment:

Anne Leach of Mysley, a widow, on June 20 bewitched John Edwardes, the infant son of Richard, a gentleman. The indictment was endorsed by Matthew Hopkins, John Sterne, Richard Edwardes and Susan Edwardes, his wife.

Elizabeth Gooding, on October 5 did entertain two evil spirits each in the likeness of a young cat, one named Mouse and the other Pease. The indictment was endorsed by Susanna Edwardes, Matthew Hopkins, Grace Norman, Jonathan Freelove, and John Sterne.

Anne Therston, a spinster, did entertain two evil spirits in the likeness of a bird and a mouse and bewitched to death one black cow. Both indictments were endorsed by John Alderton and Samuel Wray.

All three were sentenced to be "hanged by the neck until they be dead," along with 23 other prisoners. For the people of England and much of Europe, there was an evil on the land: witchcraft.

A supposed witch, Mother Sawyer; her black dog; and her victim. (Corbis)

WORLD HISTORY

On the Edge of Enlightenment

The belief in witches is ancient. As shown by the quote from the Hebrew Bible, the Israelites believed in witches, as did the Babylonians and the Romans. While witches have been prosecuted from the earliest times, the 16th and 17th centuries in Europe and England marked a peak. It has been called "the great witch craze." Before it was over, thousands would be executed or imprisoned. These centuries also marked the years of the High Renaissance, the Reformation, and the Scientific Revolution.

Scholars are divided about what caused the witch craze. Some point to the turbulent changes taking place in the societies of the 16th and 17th centuries. In such stressful times, people and institutions often look for others to blame and make scapegoats out of them. Since most of the victims of the witch craze were women, many of them unmarried or widows, some experts have argued that its cause can be traced to the hatred of woman by the male-dominated societies of the time.

Other experts believe that the witch craze had deeper roots. They claim that it represented a clash between established religions, Catholicism and Protestantism, and older folk culture and beliefs. Before the spread of Christianity near the end of the Roman Empire, a variety of older religions held sway in Europe. Most worshipped various gods and had their own religious practices. For example, the Celts, who lived in parts of Germany, France, Spain, Scotland, and Ireland, held ceremonies every fall to appease the spirits of the dead by building bonfires on tall hills. The ancient Wicca religion worshiped nature and held rituals to ensure good harvests. By the time of the 16th century, many of these practices had been suppressed or adapted by the church. For example, All Souls Day, a Catholic religious holiday, has its origin in old Celtic practices. Nevertheless, some rituals continued to be practiced, especially in rural areas. They became associated or confused with devil worship and the church viewed them as a threat that had to be severely repressed.

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A magistrate orders torture for a suspected witch. (Corbis-Bettmann)

The Malleus Maleficarum

While the general cause of the witch craze may be debatable, many historians think it was energized by the actions of Pope Innocent VIII in 1484. In that year, the Vatican became increasingly concerned about what it perceived as the growing problem of sorcery and witchcraft, particularly in Germany. In December of that year, the pope issued a Bull (decree) condemning the practices of witchcraft and ordering the clergy to assist in stamping it out. While not the only church decree on the subject of witchcraft, it was the most powerful and influential.

To aid in these new efforts, the church had two inquisitors, Heinrich Kramer and James Sprenger, who would lead the campaign against witchcraft. Both senior churchmen of the Dominican Order, Kramer and Sprenger pursued their duties with energy and determination. The first task was the writing of the *Malleus Maleficarum* (The Witch Hammer), published as early as 1486. It was a handbook to be used by church and civil authorities alike for identifying, trying, and punishing witches. Widely distributed, the book continued to be printed and used well into the 1700s. Oddly, it was also widely used in Protestant countries.

By the mid-1500s, efforts to stamp out witches in Europe had reached their height. Some experts have estimated that as many as 300,000 people were tried and executed. . . .

By the mid-1500s, efforts to stamp out witches in Europe had reached their height. Some experts have estimated that as many as 300,000 people were tried and executed, usually by burning. The peak of the witch craze in England did not come until later. In 1559 during the reign of Elizabeth, concerns arose that laws against witchcraft were not strong enough, so a new statute was passed making witchcraft a felony. Over the next decades and well into the 1600s, prosecutions increased. While earlier historians believed that up to 100,000 people accused of witchcraft were killed, usually by hanging, modern estimates are much lower. Research of court records puts the number closer to 1,000 executions between 1542 and 1736.

The Trials of Witches

Procedures for trying witches varied from place to place. In this period, the distinction between religious and civil authority was blurred. The monarch of the land had both. Cases were controlled by overlapping religious and civil laws. In general, church authorities were responsible for the souls of witches. The civil authorities were responsible for their bodies. A church court would try to determine if a person was a witch, get the person to confess the sin, and assign penance. People convicted would then be turned over to civil authorities for punishment. In England, after the passage of the statute making witchcraft a felony, the civil courts also began trying witches.

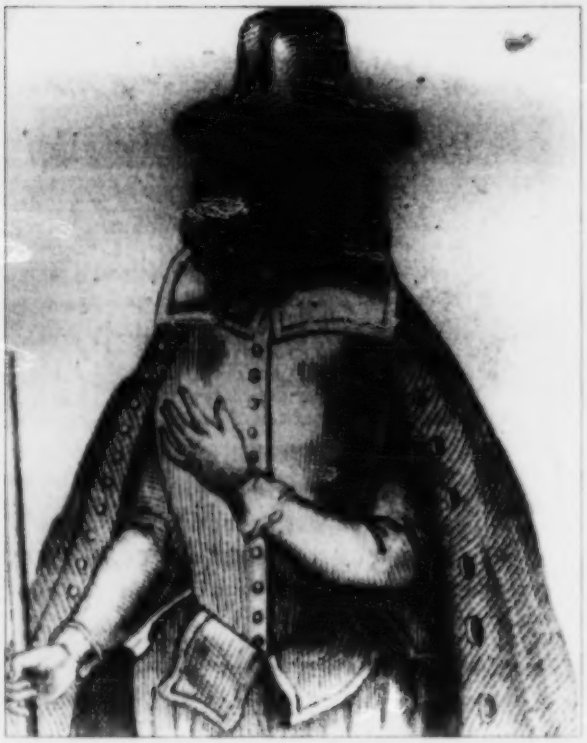
To modern eyes, the case procedures in a witch trial may seem both bizarre and unfair. But they were based on deeply held beliefs and could be quite complex. A case would often start with an accusation of a witness. A person could be accused of acts of sorcery, magic, using charms, or making a pact with the devil. Most often a person was accused of causing harm by using witchcraft. Failing crops, a horse gone lame, a dead cow, a person suddenly falling ill, or an unex-

pected thunderstorm—all could be the product of witchcraft. Sometimes the authorities employed professional "witchfinders." These experts could supposedly spot evidence of witchcraft and identify the person responsible. Matthew Hopkins served this role in England in the mid-1600s.

Once accused, the person could be held for examination. Conducted by judges or magistrates, the examination went through several stages. It began with the questioning of witnesses. The *Malleus* urged judges to carefully question witnesses to find out if they were being truthful or making claims based on a grudge against the accused. However, a person could be convicted of witchcraft on the words of a single witness.

The next stage involved questioning the accused witch. If the witch confessed, the process would end. If not, the questioning would proceed with the aim of gaining a confession. Because it was assumed that a witch would try to conceal the crimes of witchcraft, the court was prepared to go to great lengths to get to the truth. The accused were often deprived of sleep and questioned repeatedly. The court also could order any number of tests to determine if the person was a witch. He or she could be bound with cords and thrown into water. If the person floated, it proved he or she was a witch, if the person sank, and maybe drowned, it showed innocence. This test was based on the belief that water would not accept the witch's evil. Other tests included searching the accused's body for the "Devil's Mark." Moles, birthmarks, or odd scars could prove the person guilty.

If tests showed that the accused was a witch, but the person refused to confess, the process moved to the next stage: torture. First, the accused was shown the instruments of torture and questioned again. If that did not work, light torture was used, perhaps thumbscrews or an iron foot clamp. Then the questioning began again. As a last resort to get a confession, a judge could order the "third degree." Here the accused would suffer the agony of the rack, or being burned with red-hot tongs, or being crushed by heavy weights. Few failed to confess during the third degree. In England, torture ran contrary to the common law and was rarely used against suspected witches. Still, many were roughly and brutally treated during examination. Those who confessed were encouraged to name other witches, sometimes with the hint of lighter punishment. But often, they were executed anyway.



Matthew Hopkins, English witch finder. (Corbis)

By today's standards, those accused of witchcraft had few rights. There were no juries as we know them, no presumption of innocence, and no right to an attorney. In fact, the *Malleus* counseled judges to keep lawyers or friends of the accused out of the courtroom so as not to confuse the process. In addition, those accused could be forced to testify against themselves, by torture or brutal treatment, if necessary. In truth, these rights of due process, as we know them, had not yet developed.

By the early 1700s the witch craze ended. In fact, America's own witch trials of 1692 in Salem came near the end of the cycle. While the witch craze ended at different times and for different reasons in other places, the Salem trials came to an end when the wrong people were accused of witchcraft and the authorities started asking questions. The young girls and woman who started the craze had accused hundreds of people. Some of them were important and wealthy. The accusers finally went too far when they claimed that Lady Phips, the governor's wife, was a witch. Unlike many of the previous victims who were poor and lacked political connections, Lady Phips was both well known and had powerful friends. It

If tests showed that the accused was a witch, but the person refused to confess, the process moved to the next stage: torture. First, the accused was shown the instruments of torture.

seemed inconceivable that she could be a witch. The authorities and people as a whole begin to question the whole process.

Soon the tide began to turn. Religious leaders and judges began to question the kind of evidence being used to convict witches. A minister, Reverend Petis, who had testified against six witches, admitted he had been in error and begged forgiveness. One of the witch trial judges, Samuel Sewell, confessed that he had wrongly convicted witches. Pending cases against accused witches were dismissed and several convicted were pardoned. The witch craze in Salem ended almost as suddenly as it had begun.

For Writing and Discussion

1. What procedures used during the witch trials were unfair? Why?
2. Why do you think the witch craze became so widespread?
3. Do you think something like the witch craze could happen again? Why or why not?

For Further Reading

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Kramer, Heinrich and Sprenger, James, *The Malleus Malleficarum*, New York: Dover Books, 1971.

Shermer, Michael, *Why People Believe Weird Things*, New York: W.H. Freeman and Company, 1997.

ACTIVITY

Modern Witch Crazes

Historians and writers have compared the witch craze of the 16th and 17th centuries to various events in the 20th century. Working as individuals or in groups, select one of the following events and research and write a one-page report comparing and contrasting it with the witch craze.

Stalin's Show Trials (1930s)

Nazi Persecution of the Jews (1930s and '40s)

America's Communist Scare (1950s)

China's Great Cultural Revolution (1960s)

The Satanic Child Abuse Scare (1970s)

Share your findings with the class. Debrief the exercise with the following question:

How did the results of the events differ in totalitarian and democratic societies?

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The Battle Over Proposition 187

The federal government has the responsibility of controlling U.S. borders and the flow of people across them. The U.S. Immigration and Naturalization Service (INS) administers the many federal laws that control immigration in the United States. But federal efforts have not succeeded in controlling the number of illegal immigrants in California and in other areas including Texas, Arizona, south Florida, New York, and Chicago. The INS estimated that California had roughly 1.6 million illegal immigrants in 1994.

This failure has prompted bitter fights at the ballot box and in the courts between those who favor strict measures to discourage illegal immigration and those who oppose such measures on humanitarian grounds.

Illegal immigrants scale walls at the U.S.-Mexican border. (AP/Wide World Photos)

A California Proposition

Proposition 187 was the most controversial measure on the California state ballot in 1994. It served as a focus of a larger debate about what should be done about illegal immigration. Frustrated by a lack of federal action and the failure of state legislation, backers of tough measures against illegal immigrants decided to take their issue to the public.

Like many states, California has an initiative process. This allows groups to place proposed measures on the ballot for consideration of the voters. If approved, a proposition becomes law in California. For a proposition to be placed on the California ballot, its backers must qualify the measure. This means they must circulate petitions among registered voters. Backers must collect enough valid signatures to amount to 5 percent of the total number of voters who cast ballots in the last election for state governor. Proposition 187 qualified and was placed on the ballot.

The purpose of Proposition 187 was clear. It was designed to discourage illegal immigration into California by denying education, health, and social services to people who did not have legal immigrant status. Under the proposition, people without legal status could be barred from getting welfare benefits, from receiving non-emergency health service, and from attending public schools. To make this happen, the measure required educational, public health, and social service administrators, and law enforcement officials to check on the immigration or citizenship status of the people they serve. For example, school officials would have to check the status of all students. Social service workers would have to check the status of their clients. The names of all those suspected of illegal status would be sent to the federal immigration service and the California attorney general.

The supporters of Proposition 187 included former immigration service administrators Harold Ezell and Alan Nelson, Assemblyman Richard Mountjoy, Governor Pete Wilson, the California Republican Party, U.S. Senate candidate Mike Huffington, and the California Coalition for Immigration Reform.

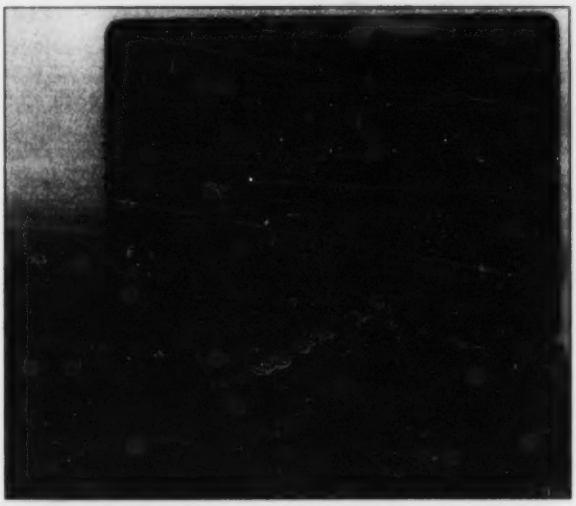
Opponents of the Proposition 187 included the California Teachers Association, California Labor Association, California Medical Association, State League of Women Voters, California State Employees Association, Los Angeles City Council, President Bill Clinton, U.S. Senator Dianne Feinstein, and the democratic candidate for governor Kathleen Brown.

Arguments

Supporters of Proposition 187, called the Save Our State campaign, saw illegal immigration as a very serious problem, especially in California. They argued that the federal government has failed to deal with the problem. In general, they believed that illegal immigration places a drain on California taxpayers. They also believed that it is morally wrong and hurts the economy and the job market. They hoped that the measure would force the federal government to better control the borders. The law, they argued, would discourage illegal immigration and reduce the

costs of public services by hundreds of millions of dollars. These savings, they argued, could be used to improve services to legal residents or to cut taxes.

Opponents of Proposition 187 may have agreed that illegal immigration is a serious problem, but they believed that the measure was unconstitutional and created bad public policy. They also worried that the proposition may violate federal law and that it could put California's federal funding in jeopardy at a potential cost of billions of dollars.



A sign warns motorists to watch for illegal immigrants crossing Interstate 5 near the Mexican border in California. Several lives have been lost in accidents. (AP/Wide World Photos)

The opponents pointed to an existing U.S. Supreme Court decision, *Plyler v. Doe* (1982), which held that the children of illegal immigrants could not be denied access to public education. They argued that this decision showed that Proposition 187 is unconstitutional and would never go into effect. Opponents also argued that Proposition 187 is bad public policy because it required public service employees to enforce it, turning them into law enforcement officers. They predicted that if illegal immigrants were denied health services, disease rates might increase. Or, if students were forced out of school and onto the streets with nothing to do, crime rates might increase. Finally, opponents argued that the measure could increase prejudice against brown-skinned residents whether they are citizens, legal residents, visitors, or illegal immigrants.

In the November 1994 election, Proposition 187 passed by a nearly 3-2 margin, but almost immediately it was challenged in federal court. The court challenges kept most of its provisions from being enforced.

Political controversy over the new law also continued after the election. Some Latino opponents of the new law urged a boycott of tourism to California; others urged a boycott of certain corporations that had contributed to the campaign of Governor Pete Wilson, a supporter of the measure. Some Latino groups opposed the boycotts, fearing it would increase unemployment in the state. From the other side of the issue, some supporters of the new law urged recall campaigns against public officials who joined in lawsuits to stop the law from going into effect.

The Aftermath

After the passage of Proposition 187, the U.S. Congress also became involved in the question of public benefits for undocumented immigrants. In 1996, a new federal welfare reform law went into effect. Called the Personal Responsibility and Work Opportunity Reconciliation Act, it too restricted the rights of illegal immigrants to receive various public benefits. In some ways, it even went further. It not only applied to illegal immigrants, but also to "not-qualified" non-citizens who are legally residing in the United States on a temporary basis. However, unlike Proposition 187, the welfare reform law did not ban children of illegal residents from public schools.

As these events took place, the federal lawsuit challenging Proposition 187 continued. Then in November 1997, two years after the measure passed in California, federal Judge Mariana R. Pfaelzer issued a ruling. In a 32-page opinion on the case, the judge declared Proposition 187 "not constitutional on its face." She struck down all of the law's major provisions including the ban on public school attendance and health and social-service benefits. She did let stand less-controversial elements of the law, which established criminal penalties for the use of false immigration documents.

Judge Pfaelzer rested her ruling on what is called the federal "preemption doctrine." Article VI of the U.S. Constitution contains the *Supremacy Clause*. It holds that laws passed by Congress are the supreme law of the land and that, if they conflict with laws passed by the various states, the state laws are invalid. Under the authority of the Supremacy Clause, the U.S Supreme Court has ruled that federal laws can "preempt" state laws. For example, the power to regulate interstate commerce is given to Congress under the Constitution. If a state were to pass a law trying to regulate interstate commerce, that law would be preempted because Congress already exercises its constitutional authority

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to regulate interstate commerce and the state laws could conflict with federal law. Preemption does not only apply to commerce matters, but to areas traditionally left to federal control including bankruptcy, patent and trademark, admiralty regulation, and *immigration*.

According to Judge Pfaelzer's ruling, because Proposition 187 attempted to regulate immigration, it was preempted by federal law. "California is powerless to enact its own legislative scheme to regulate immigration," stated the judge. "It is likewise powerless to enact its own legislative scheme to regulate alien access to public benefits." To support her ruling, the judge cited the recent federal welfare reform act as demonstrating Congress's intent to regulate in this area.

Supporters of the Proposition 187 vowed to appeal the ruling to the U.S. Supreme Court. Whether in the courts or in the political arena, the debate over Proposition 187 and other similar measures is likely to continue for some time.

For Discussion

1. How did Proposition 187 get on the California ballot?
2. What was the proposition supposed to accomplish?
3. What does the proposition require?
4. How did Judge Pfaelzer rule on the case? What reasons did she give?

A C T I V I T Y

Citizens Advisory Panel

Introduction: Proposition 187 is an example of a public policy. Public policy is a governmental law, rule, or action on a particular issue. Because public policy can affect many lives and have widespread impact, there are often many opinions about what is good or bad policy. When thinking about public policy, it is important for everyone to ask some tough questions about it. This should happen at every stage of policy making: when it is proposed, or adopted, or even after it goes into effect. Remember: Laws and policies, even when enacted, can be changed or repealed or overturned.

All of us should be involved in policy making. We do this when we vote. We do this when we write to our elected officials or newspapers. We do this when we work on elections or join with others to speak our minds.

To be real players in helping shape public policy, we need to be informed about the issue. We need to think through issues and proposed policies. We need to be able to discuss and effectively state our views. This will help to persuade others.

Instructions: Imagine that a law similar to Proposition 187 were being considered where you live. Imagine that you have been appointed to a Citizen Advisory Panel to make recommendations about the proposed law. Based on what you have learned about Proposition 187, work in small groups to answer the following questions. Similar questions can be used when you are analyzing any policy. Make sure you think about and answer each question. Be prepared to share your answers with the class.

1. What problem is the proposition designed to address?
2. What are the causes of the problem? What effects does the problem have?
3. Does the proposition address the causes of the problem? Does the proposition help lessen its negative effects?
4. What benefits will the proposition have? What costs will it have?
5. What are some alternatives to the proposition?
6. Based on the answers to the previous questions, would you support or oppose the proposition?

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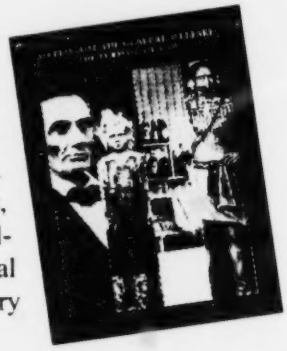

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The
BILL OF RIGHTS IN ACTION

CONSTITUTIONAL RIGHTS FOUNDATION SPRING 1998 VOLUME 14 NUMBER 2

An Issue of Consent

The president "shall nominate and by and with the Advice and Consent of the Senate, shall appoint . . . judges of the Supreme Court . . . and other officials of the United States."

—U.S. Constitution, Article II, Section 2

A president makes many appointments. Among the most important are those for justices of the Supreme Court and judges of the lower federal courts. These members of the federal judiciary exercise great power. They interpret the Constitution and determine whether laws violate it. They can overturn state court decisions.

Supreme Court nominee Robert Bork sits between former President Gerald Ford and Senator Robert Dole at the beginning of Bork's 1987 confirmation hearing. The Senate rejected Bork's nomination. (AP/Wide World Photos)

U S GOVERNMENT

Realizing the importance of an effective judiciary, the framers of the Constitution gave both the president and the Senate a role in selecting judges. This was done to assure that the best people would be picked and that neither the executive nor the legislative branch could control the judiciary. But the Constitution did not define how the Senate should give its "advice and consent" on judicial appointments.

In recent years, a number of controversies have arisen over the appointments of both Supreme Court justices and lower federal judges. Some experts worry that the process has become too political, leading to bitter partisan struggles on ideological grounds. Some fear that, if this trend continues, not only will well-qualified individuals be discouraged from becoming judges, but that the ranks of the federal judiciary will be filled with judges more likely to make decisions on the basis of politics rather than by independent thinking.

It is not surprising that these concerns have arisen in the last three presidencies, those of Ronald Reagan, George Bush, and Bill Clinton. During these administrations, the president was often of a different party than the majority of the Senate.

Supreme Court Battles

The Constitution says nothing about the qualifications of Supreme Court members. Over the years, presidents have looked for different qualities in their court nominees. One of the most important has been the nominee's legal training and experience. Presidents have also made nominations so that the justices do not all come

(Continued on next page)

Independence of the Judiciary

One of the basic tenets of our democracy is that the judiciary should be independent and not subject to political influences. This *Bill of Rights in Action* focuses on issues related to judicial independence. The first article examines the process of advice and consent for appointments to the federal judiciary, including Supreme Court appointments. The second article explores the role voters should play in state judicial elections. The final article traces the sometimes turbulent history of our independent federal judiciary.

U.S. Government: An Issue of Consent

U.S. Government: Judges and Voters

U.S. History: An Independent Judiciary

This issue of the Bill of Rights in Action *is made possible by a generous grant from the W.M. Keck Foundation*

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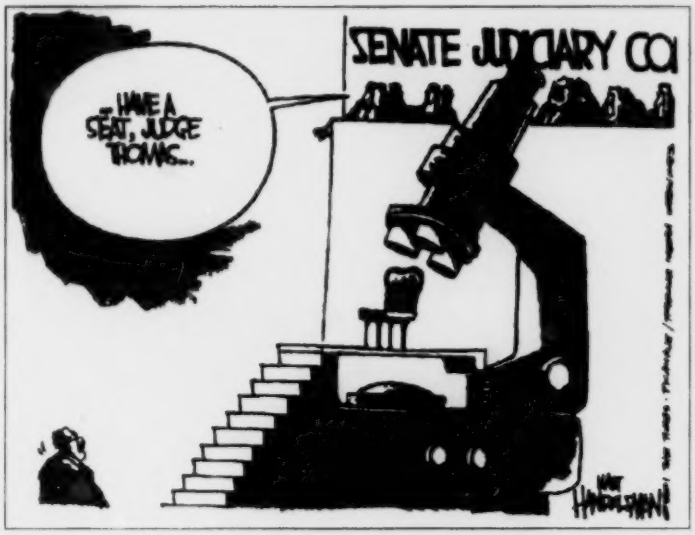
from one part of the country. A candidate's religion—and more recently race and sex—have been additional factors considered by presidents trying to achieve a balanced court. Finally, most presidents want to put people on the Supreme Court who share their philosophy about government, the law, and the Constitution. But it is not easy to predict how a person will decide casesonce he or she gets on the Supreme Court.



The president may nominate a person for the Supreme Court for many different reasons. But what about the other side of the Constitutional equation? For what reasons may the Senate reject a Supreme Court nominee? Again, the Constitution is silent.

Shortly after the Constitutional Convention, Alexander Hamilton wrote in No. 76 of *The Federalist Papers* that there had to be "special and strong reasons for the refusal" of any presidential nominee. On the other hand, Hamilton recognized that the "advice and consent" requirement "would be an excellent check upon a spirit of favoritism in the President."

Since 1789, when George Washington made his first Supreme Court appointments, the Senate has rejected 28 out of 139 nominations. Most of these rejections came about because the nominee lacked legal ability, was inexperienced, or had committed some unethical act. Some argue that these should be the only reasons for rejecting a Supreme Court nominee. Others, however, reason that senators should also have the freedom to vote against a nominee because of his or her ideas.

For what reasons may the Senate reject a Supreme Court nominee?

On July 1, 1987, President Reagan nominated Robert Bork, a conservative federal appeals court judge, to be an associate justice of the Supreme Court. His nomination raised a storm of controversy in the Senate controlled by the Democrats.

Reagan had already appointed two conservative members of the Supreme Court, and if Bork were confirmed, it would give the conservatives a solid four votes. Since at least one other justice frequently sided with the conservatives, Democrats feared that conservatives would control the nine-member Supreme Court.

Robert Bork, age 60, had excellent legal credentials as a law professor, legal writer, U.S. solicitor general, and federal judge. However, Bork was an advocate of "original intent," a philosophy about how to interpret the Constitution. This means that he believed the Supreme Court should decide cases strictly according to the words and intent of those who wrote the Constitution in 1787. Bork objected to various Supreme Court decisions that he believed created new rights. From his point of view, this is the job of Congress, the state legislatures, or the constitutional amendment process. For example, Bork had noted in his writings that there is no right of privacy specifically mentioned in the Constitution. He objected to the 1973 Supreme Court ruling that recognized a privacy right for women, which allowed them to choose whether or not to have an abortion. He also questioned prior court decisions on pornography, the exclusionary rule, and prayers in schools.

Liberal senators were enraged over the Bork nomination. Democratic Senator Edward Kennedy protested that, "Robert Bork is wrong on civil rights, wrong on equal rights for women, wrong on the First

Amendment and Ronald Reagan is wrong to try to put him on the Supreme Court."

After a series of grueling hearings before the Senate Judiciary Committee, Robert Bork was rejected as an appointee to the U.S. Supreme Court. Conservatives cried foul, claiming no previous nominee had ever undergone such long and grueling questioning on issues of judicial philosophy. They also charged that liberal interest groups outside of Congress had targeted Bork for defeat because of his conservative beliefs. Senate liberals argued that Bork's judicial philosophy placed him too far outside the mainstream to be a Supreme Court justice and that they had the right to reject him under their powers of "advice and consent."

When Justice Thurgood Marshall, the Supreme Court's only black justice, retired in 1991, it was President George Bush's turn to nominate a justice. He chose Clarence Thomas, a federal judge and another African-American. Unlike Marshall, Thomas had a very conservative judicial philosophy and his nomination soon ran into trouble.

Anita Hill, a black woman and law professor, accused Thomas of sexually harassing her years before when they had worked together. In televised hearings, she gave a graphic account of her charges, which attacked the character of the nominee. For his part, Thomas refused to answer the committee's questions about the charges, but likened the hearings to a "high-tech lynching," a clear reference to a time in America when black men suffered hangings at the hands of white mobs.

At the end of the process, Clarence Thomas was confirmed as a Supreme Court justice, but charges and countercharges over the hearings continued. Conservatives claimed that Thomas had been unfairly attacked because of his judicial viewpoints. Several women's political groups claimed that the committee was sexist in its treatment of Hill. Liberal Democrats accused the president of cynicism by appointing to the court an African-American conservative, a political viewpoint shared by relatively few blacks.

Battles Over Federal Judges

As president, Bill Clinton has nominated two Supreme Court justices, Ruth Bader Ginsburg in 1993 and Stephen Breyer in 1994. As moderates, both were confirmed by a Democratically controlled Senate and had bipartisan support. But when the Democrats lost control of the Senate to Republicans in 1994, new controversy erupted about the judicial confirmation process.

The battles over the Supreme Court and the federal judiciary demonstrate that partisan politics have become a significant factor in the selection process in recent years.

The process of selecting federal judges begins when the president receives recommendations from senators for candidates from their states. The president then makes nominations, which are forwarded to the Senate. The nominations are referred to the Senate Judiciary Committee, chaired by a member of the majority party. Committee members send the nominees questionnaires about their backgrounds and writings, which are scrutinized by the committee. The nominee may go through one or more hearings where they are questioned by the committee. The committee then makes its recommendations to the full Senate, which votes on the appointment.

When President Bush left office in 1993, well over 100 federal judge's positions were unfilled. While President Clinton has filled over 150 positions in his term of office, as of March 1998 there were 87 vacancies with 48 nominations pending. Chief Justice William Rehnquist in his annual message on the federal judiciary pointed out that the number of vacancies was hurting the work of the federal courts and urged that they be more quickly filled.

Democrats charge that the reluctance to fill the vacancies is payback for the rejection of Judge Bork by the Democratic Senate during the Reagan years. They also charge that the Senate Judiciary Committee, with its Republican majority, is delaying the appointments of well-qualified and moderate nominees by making overzealous background checks and holding drawn-out hearings. They also complain that Republican leadership has delayed a full Senate vote on some

nominees even after the Judiciary Committee has made a recommendation.

Republicans disagree, claiming that the Judiciary Committee is merely exercising its constitutional power of "advice and consent." They assert that the review process takes a long time to adequately check the backgrounds of nominees and to assure that judges who are selected will not be "activists" but will follow the law and Constitution.

There is little question that conservatives in and out of Congress view the make-up and operations of the federal judiciary as an important issue. In 1995, shortly after Republicans took over Congress, Peter Rusthoven, a conservative legal writer, charged that, "The Clinton Administration and liberal-left interest groups almost certainly will try to use the federal courts to win through judicial activism results unobtainable through the democratic process." He went on to call for conservatives to reject judicial nominees who demonstrated the "disease of judicial activism." Also, a number of conservative organizations analyze the records of various judges and lobby against those who are deemed too liberal, just as liberal organizations lobby against those they consider too conservative.

The battles over the Supreme Court and the federal judiciary demonstrate that partisan politics have become a significant factor in the selection process in recent years. This development raises important questions. What factors should be taken into account when selecting a federal judge? Should a nominee be rejected on the basis of his or her political beliefs? What role should outside interest groups play in the process?

An even more important question is: What effect might such partisan politics have on the independence of the judiciary? Will qualified judicial candidates censor their writings or conform their opinions fearing that, if they do not, a federal judgeship is out of the question? Will qualified candidates refuse to even try to become judges rather than face a prolonged and bitter selection process?

The founders of our country saw the importance of having judges make decisions about law and the Constitution free from political pressure. Only time will tell if their wisdom will survive.

For Discussion and Writing

1. Explain how "advice and consent" is an example of "checks and balances."
2. Why do you think Supreme Court justices and federal judges are appointed for life terms?
3. What effect might partisan politics in selecting federal judicial officers have on an independent judiciary?
4. Do you think judicial nominees should be asked about how they would decide a specific case? Should judicial nominees answer such a question? Why or why not?

ACTIVITY

Choosing Federal Judicial Officers

1. Which one of the following criteria do you think the U.S. Senate should follow in deciding whether to confirm or reject a U.S. Supreme Court or federal judge nominee? Take a vote in the class on this question and discuss the results.
   A. Whoever the president nominates should always be appointed by the Senate.
   B. Senators should reject a nominee only because of:
      1. inadequate legal training
      2. lack of legal experience
      3. unethical behavior such as racial or religious prejudice
   C. In addition to the reasons listed in part B, senators should have the freedom to vote against a nominee because they disagree with his or her ideas about the Constitution.
2. Next, meet in small groups to discuss whether Robert Bork should have been confirmed or rejected by the Senate. Keep in mind the choice you made in the first part of this activity.

For Further Reading

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Voters and Judges

When trial judges preside over lawsuits and criminal trials, they make many legal rulings: Should this evidence be admitted? Should this objection be sustained? What law applies to this case? Is the law constitutional? If a party appeals, appellate court judges review these rulings. All judges—trial and appellate—are supposed to be fair and impartial. When judges interpret and apply the law, they must base their decisions on statutes, Constitutional law, and prior court cases. They must never be swayed by politics or popular opinion. This is what separates courtrooms from lynch mobs. This is what is meant by the rule of law. Our democracy depends on an independent judiciary.

In 1986, voters ousted Chief Justice Rose Bird and two other justices from the California Supreme Court. (AP/Wide World Photos)

The U.S. Constitution attempts to ensure judicial independence. All federal judges are appointed by the president, confirmed by the U.S. Senate, and serve for life. There is only one way under the Constitution that federal judges can be removed: The U.S. House of Representatives can vote to impeach any federal judge for "treason, bribery or other high crimes or misdemeanors." The judge is then tried by the Senate. To remove the judge, two-thirds of the Senate must vote to convict. Only 13 federal judges in our history have been impeached by the House and just seven convicted by the Senate. All have been convicted for alleged criminal behavior. None has ever been convicted for making unpopular decisions or for holding an unpopular judicial philosophy.

But most judges in the United States are not members of the federal judiciary. Most belong to the various state courts. And, unlike federal judges, most state judges have to face the voters. The question arises: How can states preserve judicial independence and still make judges accountable to voters?

In many states, voters can recall judges that they believe do not belong on the bench. People opposing a judge must get a certain number of signatures on recall petitions. Then the judge's name is put on the ballot and voters decide whether they want to retain or recall the judge. If a majority votes to recall the judge, then the judge must be replaced—either by election or appointment, depending on the state.

About 20 states hold direct elections for judges. This means that judges run for office. This allows voters to elect judges in their district instead of the governor appointing every judge. But it also has drawbacks. Judges must raise money for campaigns, often from lawyers who will appear before them. That gives the appearance that lawyers are paying for favoritism. Judicial campaigns in themselves are problematic. Judges can't make campaign promises that they will rule in a certain way. That would make the judge biased. Bringing judges into the political process can make them seem less neutral in the courtroom.

For these reasons, most states have moved away from direct election of judges. In these states, the governor usually appoints all state appellate court judges and most trial court judges. In some states the governor makes selections from a list prepared by a judicial commission, which searches for the most qualified judicial candidates.

But most of these states still require judges to face voters. Appellate judges usually go on the ballot in the next general election after being appointed. These are called retention elections because voters get to decide whether or not to retain the judges. No one can oppose them. Voters must choose "yes" or "no." If voters retain them, they serve what remains of their 12-year term of office and then stand for election to a full 12-year term. Trial judges also go before the voters in the next general election after their appointment. But their terms are shorter, typically six years. And in some states, opponents can run against them.

Tammy Bruce led a recall campaign against a judge who gave O.J. Simpson custody of his children. Although the campaign failed, Bruce has formed a new group to monitor judges. (AP/Wide World Photos)

This system has generally shielded judges from politics. It allows judges to serve long terms with a limited degree of accountability to voters. But in recent years, some recall and retention elections have provoked controversy. The late Bernard Witkin, a noted legal scholar, warned:

> What we're seeing is a new way to approach judicial elections, challenging judges' qualifications on the basis of particular decisions that affect particular groups. . . . If we reach the point where . . . we end up telling the court, "If you don't do as we want, we'll remove you," then the courts won't be worth saving.

We'll examine four of these controversial elections—all from California.

Rose Bird and the Death Penalty

In 1977, Democratic Governor Jerry Brown appointed Rose Bird as chief justice of California. Bird was the first woman chief justice and, in fact, the first woman ever appointed to the court. Bird had no judicial experience. She had worked as a public defender and had impressed Brown as head of California's Department of Agriculture. Although he considered her highly qualified, she barely squeaked by her retention election in 1978, gaining just 51.7 percent of the vote.

That same year, voters overwhelmingly passed a death-penalty initiative. In subsequent years, 59 defendants sentenced under this death-penalty law appealed their cases to the Supreme Court. In each case, Bird voted to overturn the sentence. A majority of the court sided with Bird in all but three of these cases. These decisions drew heavy criticism. Many accused the court of thwarting the will of the people. In 1986, six justices of the Supreme Court, including Bird, faced a retention election. Supporters of the death penalty campaigned to remove three justices—Bird, Joseph Grodin (a former professor of labor law), and Cruz Reynoso (the first Latino on the court). All three had been appointed by Brown. Grodin and Reynoso had only voted to uphold death sentences in three cases.

No justice in California had ever lost a retention election, but this campaign caught fire. A crime victims organization enlisted people across the state to ring doorbells. The California District Attorneys Association opposed the justices. Anti-Bird literature flooded voters' mailboxes. The campaign gained the support of many in the business community who did not like the justices because of what they considered a pro-consumer bias. Republican Governor George Deukmejian, running for re-election, constantly attacked Bird and the two other justices as "liberals" lacking "impartiality and objectivity." His Democratic opponent, Tom Bradley, refused to take sides. Bird aired a series of commercials, but refrained from getting involved in a discussion about the death penalty. Her commercials focused on the importance of an independent judiciary. She stated: "Judges with a backbone are a California tradition worth keeping." Although the three justices had support within the legal community, anti-Bird forces vastly outspent their supporters. All three justices lost, and the newly re-elected Governor Deukmejian appointed three justices in their place.

Ron George and Abortion

With a whole new make-up of justices, the California Supreme Court reconsidered and reversed several rulings that the Bird court had made. Over the years, it upheld death penalty sentences and made numerous pro-business rulings. Just as critics of Bird said her court was too predictably liberal, critics of the new court said it was too predictably conservative.

In 1991, Republican Governor Pete Wilson appointed to the Supreme Court Ron George, a well-respected judge with almost 20 years of judicial experience. In 1996, Wilson named George chief justice. In his brief tenure, George has led the court to more moderate

positions on criminal justice and business issues. Then in 1997, the court in a 4–3 vote struck down a state law requiring minors to get parental consent before they get an abortion. The opinion of the court, written by George, stated that the law violated the right to privacy guaranteed by the California Constitution.

The decision provoked great controversy. The previous year the court had upheld the law. But when two justices left the court, the court decided to rehear the case. Republican state Senator Ray Haynes denounced the new decision. He said, "You shouldn't be playing a political game with a court decision."

George and Ming Chin, a justice who voted with George, have retention elections in November 1998. A pro-life group is mounting a campaign against both judges. Several Republicans have joined the campaign. Republican gubernatorial candidate Dan Lungren has declined to take sides, but has said he favors a constitutional amendment to overturn the court's abortion decision.

In February at the state Republican convention, Republicans set up a committee headed by Senator Haynes to decide whether to endorse or oppose the two justices in the traditionally non-partisan election. The committee has said it would wait until the court decided two cases on whether the Boy Scouts could ban gays and atheists from joining. GOP Chairman Michael Shroeder said that these cases would "be an important factor in the [endorsement] decision." In March, the Supreme Court in unanimous decisions held that the scouts did not have to admit gays or atheists. The lawsuits were based on an antidiscrimination statute that applied only to businesses, and the court ruled that the scouts were not a business. The Republican committee has not yet made its recommendation on George and Ming.

The *Los Angeles Times* has condemned the anti-George campaign: "What's at issue here, as it was with Bird, is judicial independence. You don't have to like a decision to support the principle that judges should not be ousted because they dared to make a decision that is not universally supported."

George and Ming plan to wage a campaign educating voters about the importance of an independent judiciary. Both are soliciting campaign contributions. George has enlisted Democratic U.S. Senator Dianne Feinstein and former Republican Governor Deukmejian to serve as honorary co-chairs of his campaign.

Joyce Karlin and the Controversial Sentence

Trial court judges have also come under attack for making controversial decisions. In California, the governor appoints most trial judges. Since 1979, the governor must first submit the names of all judicial candidates to the Commission on Judicial Nominees Evaluation. This commission, made up of lawyers and members of the public, evaluates whether the candidates are qualified. Once appointed, judges stand for election every six years and other people can enter their names as candidates.

In 1991, newly appointed Los Angeles Superior Court Judge Joyce Karlin handed down a sentence in a highly charged trial. Defendant Soon Ja Du, a Korean-immigrant grocer, had been convicted of voluntary manslaughter for killing Latasha Harlins, a 15-year-old African-American girl. A store video camera had recorded the two women struggling over a bottle of orange juice. As Harlins started to leave, Du shot her dead.

If we reach the point where . . . we end up telling the court, "If you don't do as we want, we'll remove you," then the courts won't be worth saving.

Karlin, a former prosecutor, could have imposed a 16-year prison term. Instead, she sentenced Du to five years probation and 400 hours of community service. Karlin stated that Du had no criminal record, had acted out of fear, and posed no threat to the community. This sentence outraged many in the African-American community. They saw it as another example of racism in the criminal justice system.

Just two weeks before, another videotape had showed Los Angeles police beating Rodney King, a black motorist pulled over after a high-speed chase. When a jury failed to convict the police officers in late April 1992, Los Angeles erupted in rioting.

In the fall of 1992, Judge Karlin was on the ballot. Three opponents challenged her. The black community rallied behind her opponents. The Los Angeles County Bar Associated rated two of her opponents as "unqualified" and rated Karlin and another opponent

as "qualified." (No one in the race received the bar's highest rating.) The *Los Angeles Times* in an editorial endorsed Karlin's opponent who received the "qualified" rating. The *Times* explained that Karlin's "stunningly inapt sentence of . . . Du . . . reflects a lack of fairness impairing her ability to sit as an impartial judge."

In a letter to the editor, Karlin responded: "If judges have to look over their shoulders as they decide a case; if they have to test the political winds in order to arrive at a politically correct verdict—then the judicial system and the freedoms it guarantees will be destroyed."

Karlin barely won the election with just 50.7 percent of the vote. But community groups kept the pressure on Karlin. Two recall attempts failed to get enough signatures to qualify. Karlin asked to move from criminal court to juvenile court, and she retired before her first term expired.

Nancy Wieben Stock and the O.J. Custody Case

In 1995, celebrity O.J. Simpson, a former football star, went on trial for murdering his former wife and her friend. The trial drew incredible media attention. Opinion polls showed the public deeply split along racial lines over Simpson's guilt. Whites overwhelming believed Simpson, a black man, guilty. A majority of blacks believed him not guilty. When the jury acquitted Simpson, many members of the public were outraged.

During the trial, Simpson was held in jail. His two young children lived with his ex-wife's parents. Following Simpson's release, he sued for custody of his children. In December 1996, Judge Nancy Wieben Stock granted Simpson custody. This decision drew tremendous criticism.

A civil lawsuit was pending, charging Simpson with wrongful death. In February 1997, a jury found Simpson liable for the deaths and awarded millions of dollars in damages to the families of Simpson's former wife and friend. Many people thought Wieben Stock should have waited for this civil case to end before awarding custody. Others, however, pointed out that the civil case would probably not end for years due to the appeals process.

Tammy Bruce of Women's Progress Alliance, a women's and children's rights organization, led a recall movement against the judge. She said that Judge Wieben Stock overlooked domestic violence in the Simpson case and another case where Wieben Stock awarded joint custody to a woman who later killed her two children. "The recall process is a way of bringing people back to the system," Bruce said. "We're going to use Nancy Wieben Stock as an example. I've heard her supporters say she's a courageous judge, but when do two dead children add up to courage?"

The legal community widely praised Wieben Stock as a judge who applied the law fairly. The president of the California Judges' Association, William McDonald, stated: "We don't conduct cases by hearing the evidence in the news media and then say, 'Let's conduct a poll'. . . . We hear the facts and apply the law to the facts. And usually, half the people end up unhappy." McDonald recommended, instead of recalling a judge, that people work to change laws they don't like.

Bruce's group failed to get the required signatures for a recall. But Bruce has formed a group called Judge Watch. She said her group will eventually monitor judges throughout the country. She warned that her group will go after judges who make the wrong decisions in child-custody and domestic-abuse cases.

For Discussion and Writing

1. Do you think it's important to have an independent judiciary? Why or why not?
2. Describe some different methods used to select judges. Which do you think is best?
3. In most states, judges are on the ballot. What do you think voters should consider when voting for judges?

A C T I V I T Y

In this activity, students will role play voters deciding whether to retain judges.

1. Divide the class into small groups.
2. Students in each group should imagine they are California voters and have the opportunity to vote "yes" or "no" on the following four judges: Rose Bird, Ron George, Joyce Carlin, and Nancy Wieben Stock.
3. Each group should discuss and vote on each judge and prepare reasons for their decisions.
4. The class as a whole should discuss and vote on each judge.
5. Debrief the activity by discussing this question: What are valid reasons for voting for and against judges?

An Independent Judiciary

One hundred years ago, a spirit of reform swept America. Led by the progressives, people who believed in clean government and that government had to help solve society's problems, the movement elected representatives to Congress and to statehouses around America. Progressives passed legislation aimed at improving working conditions, breaking up business monopolies, creating welfare programs for the poor, and assuring pure food and drug standards. Businesses hurt by this new legislation often opposed the new laws and challenged them in court.

Alexander Hamilton, one of the framers of the Constitution, strongly supported an independent judiciary. (AP/Wide World Photos)

Many of these lawsuits ended up in the U.S. Supreme Court led by Chief Justice Melville Weston Fuller. Fuller and a majority of the justices at the time often took a dim view of government regulation and believed that social problems would best be solved by the workings of a free and uncontrolled market. They based many of their court opinions on the due process clause of the 14th Amendment, which says no state shall "deprive any person of life, liberty, or property, without due process of law . . . ." In interpreting this clause, they developed the doctrine of substantive due process.

U S HISTORY

Under this doctrine, the court would review the substance of governmental laws and would find unconstitutional those laws that interfered with a right to property, or freedom to make contracts, or some other liberty. For example, in 1897 the state of New York passed a labor law forbidding employees of a company from working more than 60 hours in one week. An employer sued claiming that the law violated the Constitution. The Supreme Court, in the case of *Lochner v. New York* (1905), struck down the law reasoning that there was "no reasonable ground for interfering with the liberty of persons or the right of free contract, by determining the hours of labor." The court went on to strike down dozens and dozens of progressive-passed laws.

The actions of the Supreme Court raised a storm of controversy. Progressives complained that the court was countering the will of the majority and usurping the powers of the legislature. Others claimed that the court lack judicial restraint and was too eager to declare laws unconstitutional. Yet, the Fuller court's decisions stood until the 1930s when a later court all but abandoned the doctrine of substantive due process.

Criticism of the role of courts in our society, however, did not end. Ironically, in recent years, conservatives often complain about "activist" judges or fear that judges are legislating from the bench. Some have favored laws that would restrict judicial power by limiting courts' jurisdiction or judges' discretion in sentencing. Other groups target judges who render unpopular decisions for removal from office through impeachment, recall, or re-election.

Defenders of the courts worry that political attacks on judges and basic changes to our judicial system could undermine the independence of the judiciary and seriously affect the delicate balance of powers contained in our constitutional system. But how did an independent judiciary come about and what does it mean to have one?

The Third Branch of Government

When the framers of the Constitution arrived in Philadelphia in 1787 to consider a new form of government for the United States, it was a foregone conclusion that it would have three branches. Well-educated students of history, the framers had been influenced by great political thinkers of the past, including the Frenchman Montesquieu. Central to his ideas about government was the concept of separation of powers. He believed that the best way to preserve individual liberty and avoid tyranny was to divide the powers of

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Ever since the time of John Marshall, the judiciary has been embroiled in political squabbles, some that have threatened its independence.

government into the legislative, executive, and judicial function. In this way, none of the branches would possess all of the power and each would balance one another off.

Those at the Constitutional Convention worried about power too. Fresh from the revolutionary experience, they wanted to make sure that the government had enough power to solve the country's problems, but not too much power to ride roughshod over the states or individual citizens. Many viewed the judicial branch as, in the words of Alexander Hamilton, "the least dangerous to the political rights of the Constitution" and as a necessary buffer between the powerful presidency and Congress.

Article III of the Constitution states: "The judicial Power of the United States shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." The article goes on to describe what kinds of cases the "judicial Power" would be empowered to hear. Language in the article suggests that the framers wanted the judicial branch to serve an independent role free from political pressure. It stated that judges should "hold their Offices during good Behavior." This meant judges could only be removed for misconduct. It also stated that judges should receive a salary that could not be reduced during the time they held office. This would assure that judges could not be punished by salary reductions if they made unpopular decisions.

Though the framers created an independent judiciary in Article III, they also included some checks and balances against too much judicial power. The Constitution gave the president the power to appoint judges with the "Advice and Consent of the Senate." It gave Congress the power to create or eliminate lower federal courts and determine what cases could be appealed to them.

Oddly, the Constitution says nothing about the one job the Supreme Court is most known for today. That is the power to review federal and state laws to determine whether or not they are constitutional. Some scholars have argued that the framers assumed that the Supreme Court would have this power without having to spell it out in the Constitution. They cite, for example, Alexander Hamilton in *The Federalist Papers*, a series of articles published to support the ratification of the Constitution. He wrote:

> The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by judges, as fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body.

Once the Constitution was ratified, the First Congress of the United States went about establishing the rest of the federal courts under the powers given to it. The Federal Judiciary Act of 1789 laid out a plan that today has grown into an extensive system of federal trial and appeal courts. It also gave federal courts the power to take appeals from state decisions.

The Power of Judicial Review

The judiciary asserted its independence and power when John Marshall became the Supreme Court's fourth Chief Justice in 1801. The question of whether the court could declare governmental actions unconstitutional had not yet been settled. The opportunity came with the case of *Marbury v. Madison* in 1803.

In the last hours of his administration, President John Adams had appointed William Marbury as a justice of the peace in the District of Columbia. Unfortunately, Marbury did not receive the appointment papers before Adams left office. The new president, Thomas Jefferson, ordered Secretary of State James Madison not to deliver the appointment to Marbury. Marbury sued to get his appointment, citing the Judiciary Act of 1789. This law had given the Supreme Court the power to order judges and government officials to act.

In his majority opinion in the case, Marshall agreed that Marbury had a right to the appointment. He ruled,

however, that the Supreme Court did not have the power to order Madison to deliver the appointment and make it official. The section of the Judiciary Act in question, he determined, gave the Supreme Court a power that it did not have under the Constitution. Since the Constitution was the supreme law of the land, Marshall reasoned, any statute that violated it could not stand and it was the duty of the Supreme Court to overturn the statute. In giving up the power in the Judiciary Act, Marshall carved out for the court a much greater one—the power of judicial review.

The Supreme Court building in Washington, D.C. Throughout our history, the court has made many controversial decisions. (Andrew Costly/CRF Photos))

Over the years, the court expanded the power of judicial review to cover not only acts of Congress, but executive and administrative orders as well. In time, it also became the power of the lower federal courts and many state courts as well. In many ways, this power was unique to the American experience. Even England, the origin of so many of our political and legal principles, did not give its judges the power to overrule acts of parliament on constitutional grounds.

Judicial review does have limits. Judges can only review laws or other governmental acts that are challenged in court. And once a ruling is made, judges must rely on the other branches of government to enforce them.

While judicial review expanded the power of the judiciary, it also placed judges in a new role. In deciding whether a governmental act meets constitutional standards, judges had to *interpret* the meaning of the Constitution. Their interpretation, even if based on law and reason, can run contrary to the views of legislators, presidents, or the public. As we saw with the Fuller court and its doctrine of substantive due process, this can lead to political controversy and charges that the court is not interpreting the Constitution, but making its own laws.

Politics and the Judiciary

Ever since the time of John Marshall, the judiciary has been embroiled in political squabbles, some that have threatened its independence. In fact, the famous case of *Marbury v. Madison* itself began when President Adams tried to appoint a loyal federalist party man to a judgeship, and the new president Jefferson rejected the appointment favoring judges from his own political viewpoint.

President Andrew Jackson quarreled with Chief Justice Marshall over the court's decision in the case of *Worcester v. Georgia*. Jackson reportedly said, "Well, John Marshall has made his decision, now let him enforce it." Though it is likely that Jackson never really used these words, the statement illustrates one of the real limits on judicial power. It must rely on the other branches of government to enforce its rulings.

Democratic President Franklin Roosevelt, frustrated with Supreme Court actions striking down much of his New Deal legislation, proposed a plan to increase the number of justices so that his appointees would be able to outvote the sitting justices. He also once prepared a radio address to tell the American people why he would not comply with a Supreme Court ruling, but at the last minute the court voted in his favor. Roosevelt's proposed plan to "pack" the Supreme Court set off a firestorm of public criticism, even from his own supporters. Viewed as a naked attack on the independence of the judiciary, no one ever proposed such a strategy again. (Later, the number of Supreme Court Justices was set at nine by federal statute.)

At times the court has also made decisions that have run contrary to the will of Congress. Under the Constitution, Congress has numerous checks that it can use against the judiciary. First, it has control over funding the federal judiciary's budget. Though it cannot lower judges' salaries during their terms in office, it can reduce staff, lower operating costs, and withhold money for court-ordered actions. Second, Congress can propose new laws or constitutional amendments to override specific court decisions. Third, it can restrict the kinds of cases that can be appealed to the federal courts. In fact, though unlikely, Congress has the power to completely abolish the lower federal courts.

Courts in Controversy

Over the last five decades, America's independent judiciary has done much to shape our history. Through its decisions, the court extended voting rights, abolished laws legalizing racial segregation, recognized the rights of those accused of crime, and expanded the rights of free speech and the press. While many of these decisions became accepted by the vast majority of Americans, others have raised ongoing controversy. Court decisions guaranteeing a woman's right to an abortion, banning prayers and Bible reading in schools, excluding illegally seized evidence in criminal trials, and permitting the burning of the American flag have led to charges that the court has gone too far in interpreting the Constitution.

These decisions have given rise to new calls for limiting the power of the judiciary. In recent years, Congress has passed legislation limiting the discretion federal judges have in determining sentences in criminal trials. Proposals have been made to limit the jurisdiction of federal courts in certain matters. The Senate has also shown its willingness to carefully scrutinize presidential appointments to the Supreme Court and to the lower federal courts under its "advice and consent" power. The trend toward limiting the power of the judiciary can also be seen at the state level.

Some worry that if these trends continue, the delicate balance between the powers of the judiciary and the other branches of government in our system could be undone. Others fear that these trends could compromise judicial independence making judges less likely to make decisions based on law and conscience and more likely to make decisions that serve political ends.

As we have seen, these debates are not new to our history. It is likely that they will continue into the new millennium and beyond.

For Discussion and Writing

1. What evidence in the Constitution suggests that the framers wanted an independent judiciary?
2. What checks against judicial power did the Constitution give Congress?
3. How did the power of judicial review increase the political pressure on judges?
4. Do you agree or disagree with Hamilton's statement that the judiciary is the "least dangerous" branch of government? Why?

ACTIVITY

Capitol Roundtable

1. Divide the class into triads. Assign each member of the triad one of the following roles: President of the United States, Chief Justice of the United States, Senate Majority Leader. (If any students are left over, designate them Speaker of the House and assign them to a group.)
2. Each member of the triad should review the article, paying particular attention to information about the powers and positions of their branch of government.
3. Each triad should discuss the following questions from the point of view of their role:
   a. What dangers to American democracy are there if the courts are too independent.?
   b. If not for a strong independent judiciary, how would the rights of minorities be protected and who would make sure that the Constitution is followed?
4. Conclude the activity by discussing the two questions as a class.

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CONSTITUTIONAL RIGHTS FOUNDATION

POSTSCRIPT

ABOUT POSTSCRIPT

Thanks to your interest, ***Bill of Rights in Action*** (***BRIA***) remains one of CRF's most popular publications. Each quarterly issue of ***BRIA*** reaches 30,000 readers nationally with reproducible readings and activities in U.S. Government and U.S. and World History. Hopefully, PostScript will give you—our largest audience base—an opportunity to learn the latest from Constitutional Rights Foundation, its programs and publications, and related news from the world of civic participation and law-related education.

ABOUT CRF

Constitutional Rights Foundation (CRF) is a non-profit, non-partisan citizenship education organization with programs and publications in law and government, civic participation and service learning. Since 1962, CRF has used education to address some of America's most serious youth-related problems: apathy, alienation, and lack of commitment to the values essential to our democratic way of life.

Through a variety of civic-education programs developed by CRF staff, young people prepare for effective citizenship and learn the vital role they can play in our society. Empowered with knowledge and skills, our youth can interact successfully with our political, legal, and economic systems. CRF is dedicated to assuring our country's future by investing in our youth today.

HOW TO CONTACT US

For more information about CRF programs and curriculum materials, please contact our office at (213) 487-5590; Fax (213) 386-0459; e-mail us at crf@crf-usa.org, or visit CRF's web site at www.crf-usa.org.

LAW-RELATED PUBLICATIONS

If you found this issue of ***BRIA*** interesting, these CRF publications may be of interest:

Criminal Justice In America

Grades: 9-12

Criminal Justice in America is a comprehensive secondary text focusing on criminal law, procedure, and criminology. It can serve as a text for an entire law-related education course, or as a supplement for civics, government, or contemporary-issues courses. Readings are supported by directed discussions, role plays, mock trials, interactive exercises and activities to involve outside resource experts. ***Criminal Justice in America*** is divided into six chapters:

- CRIME includes sections on victim rights, history of crime, methods for measuring crime, white collar crime, violent crime, youth gangs, elements of crimes, and legal defenses to crime.
- POLICE includes sections on history of law enforcement, search and seizure, interrogations and confessions, the exclusionary rule, the use of force, and police-community relations.
- THE CRIMINAL CASE explores a hypothetical criminal case from arrest through trial. It includes all the key steps of the criminal trial process.
- CORRECTIONS includes sections on theories of punishment, history of corrections, sentencing, alternatives to incarceration, prison conditions, parole, recidivism, and capital punishment.
- JUVENILE JUSTICE includes sections on the history of the juvenile system, delinquency, status offenses, steps in a juvenile case, rights of juveniles, juvenile corrections, transfer to the adult system, and death penalty for juveniles.
- SOLUTIONS includes sections on the debates over the cause of crime, racism in the justice system, history of vigilantism, policy options to reduce crime and make the criminal justice system fairer, and options for individual citizens.

A Teachers Guide for ***Criminal Justice in America*** provides teaching strategies, activity masters, chapter and final tests, background readings, and additional resources to supplement the text.

CRF Mock Trial Series

Grades 6-12

Each year, Constitutional Rights Foundation develops a mock trial for the California State Mock Trial Competition. Each mock trial packet includes a hypothetical case, witness statements, legal

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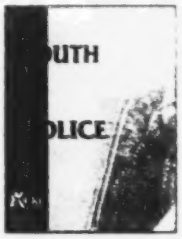
authorities, trial instructions, and procedural guidelines. It also includes a pretrial motion, designed to deepen student understanding of constitutional issues related to criminal trials.

Youth and Police

Grades 6–9



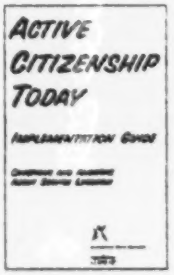
Youth and Police is designed to educate students about the law, improve police-community relations, and involve middle- and high-school youth in service-learning activities to improve public safety. This curriculum contains 10 interactive lessons and comes with reproducible handout masters. Two-day lesson sequences focus on the development of the modern police force, issues of school safety, and an adaptation of CRF's ***Police Patrol*** simulation. Then, working together with local police or school officers, students create and conduct their own service-learning project to improve community-police relations and neighborhood safety.

Extension lessons promote critical-thinking skill development by involving students in the evaluation of laws and policies that affect law enforcement. Topics covered include the use of force, the laws of arrest and search, the ***Miranda*** rule, and police governance and discipline.

NEW PUBLICATIONS FROM CRF

Active Citizenship Today Implementation Guide

Questions and Answers About Service Learning



How can students, teachers, school administrators, parents, and concerned community members work together on local issues? How can teachers and school administrators find—and maintain—school and community support for a service-learning program? How can teachers fulfill their curriculum requirements while students explore and address the needs of their community?

The ***Active Citizenship Today Implementation Guide*** distills nearly five years of experience accumulated by CRF and Close Up Foundation during the development of ACT—***Active Citizenship Today***. ACT is a service-learning program for middle- and high-school students that links social studies skills and knowledge to community needs and resources. ACT is built around a problem-solving framework that offers a hands-on approach to local political issues, government, and policy. The ***ACT Implementation Guide*** gathers information from program designers, teachers, school administrators, students, parents, and community members who have participated in the ACT program in school districts across the county. This easy-to-use handbook answers a broad range of practical questions about planning any service-learning program and keeping it going.

For more information on CRF publications, call (800) 488-4CRF.

IN THE WORKS...

Surdna Foundation Funds CRF to Develop Local Government Curriculum

The Surdna Foundation is underwriting the development of a new service-learning curriculum for high school. CRF staff will work closely with teachers and students from five diverse senior high schools to design and pilot materials that will help infuse service learning into the social studies curriculum. The material will increase student understanding of the role, functions, and processes of local government.

CityYouth for 8th Grade

Linked to U.S. history, CityYouth for 8th grade follows the CityYouth framework with 32 new multidisciplinary lessons arranged in four developmental units: building community awareness; exploring community needs; meeting community needs; and taking action. Each unit is introduced through a historical "window" depicting an era of U.S. history. Science, math, and language arts lessons link the study of community issues with the skills and content of their subject area and provide a contemporary focus on issues.

CRF PROGRAM NEWS

Grants Available for Youth Service Projects

Thanks to continuing support from The Maurice R. Robinson Fund in New York City, Constitutional Rights Foundation is again sponsoring a **mini-grant program** for student-planned K-12 service-learning projects. Approximately 30 grants will be awarded. The typical grant is expected to be in the range of $400-$600. No award will exceed $1,000. Students should be involved in the planning of the projects, which should be carried out during the 1998-99 school year. **NOTE:** Applications must be postmarked by October 1, 1998.

For applications and more information about the Robinson Mini-Grant Program, contact Julie Glaser, Program Coordinator, CRF, (213) 487-5590, ext. 108.

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Project Next Step to Assist Schools in Service-Learning Integration

Constitutional Rights Foundation has received three-year grants from the Corporation for National Service and the Ford Foundation to assist schools in integrating service learning and civic responsibility into the core academic curriculum. This program, **Project Next Step**, is an intensive national expansion model designed to establish a cadre of national trainers, provide staff development and follow-up support to teachers, and develop appropriate curriculum materials.

The goal is to use CRF's CityYouth and Active Citizenship Today (ACT) as models to integrate service learning into middle- and high school academic programs. Four national sites will be chosen each year. Each site will send four educators to a "Training of Trainers" in Los Angeles. These four trainers will then—with the assistance of CRF staff—conduct trainings at their own sites for 16 other teachers.

For more information, contact: Julie Glaser, Program Coordinator, CRF, (213) 487-5590 ext. 108.

CRF Launches Multimedia Competition

In 1997, Constitutional Rights Foundation launched **Free Expression in a Free Society**, a pilot program inviting 6th through 12th grade students to enter a special media competition that focuses on First Amendment issues. Students are asked to research and, utilizing their creativity, develop a 10-minute multimedia presentation exploring the rights and responsibilities of free expression. Along with their VHS documentary, students include a summarized description of their topic with an annotated research bibliography.

Free Expression contestants can work individually or in a group. There are two categories: Juniors (6th through 8th grade) and Seniors (9th through 12th grade). Entries are submitted to CRF's History Day Program. Judges from Hollywood's entertainment industry review the top three entries in Junior and Senior categories. Last year's judges included Academy Award-winning director Robert Wise and actor Richard Dreyfuss. Winners receive a cash award and are invited, along with their parents and teachers, to a Beverly Hills screening of the winning documentaries. Currently, **Free Expression in a Free Society** is open only to schools in California. Plans are being made to extend the competition nationwide. For more information, contact Andy Schwich, Director of History and Law, CRF, (213) 487-5590, ext. 126.

FEEDBACK

We welcome your recommendations of themes for future issues of BRIA, conference listings, resource materials, publications you'd like to see reviewed, or curriculum and activities ideas. Send your feedback and information to crf@crf-usa.org. Thank you for your contributions and—the most of all—for your dedication to youth.

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Comments/Suggestions_____

For more details about the publications and materials available from CRF call (800)488-4CRF or visit our web site at www.crf-usa.org

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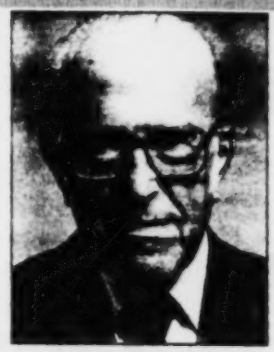
Lloyd M. Smith



It is with great sadness that we announce the passing of Lloyd Smith, CRF's long-time board member, benefactor and member of the Publications Committee. Lloyd died peacefully at home on March 12, 1998. Our deeply felt condolences go to his wife Edith and the entire Smith family.

Throughout his long life, Lloyd truly embodied the ideals set forth in the Bill of Rights. He was a true believer in its principles and that all young people must be educated about our constitutional traditions. In 1985, Lloyd received the CRF's Bill of Rights in Action Award and our Lloyd M. Smith Award was named in his honor.

Through his careful reviews and suggestions, CRF's publications were immeasurably improved. *Bill of Rights in Action* was a special favorite of Lloyd's who continued to provide encouragement for our efforts right up until the end. (We are honored that Lloyd found our Winter edition particularly "well done.")

Lloyd's wit, wisdom and generosity of spirit will be missed by all who knew him, but his many legacies will live on.

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The
BILL OF RIGHTS IN ACTION

CONSTITUTIONAL RIGHTS FOUNDATION

SUMMER 1998 VOLUME 14 NUMBER 3

How Welfare Began in the United States

During the Great Depression of the 1930s, local and state governments as well as private charities were overwhelmed by needy families seeking food, clothing, and shelter. In 1935, welfare for poor children and other dependent persons became a federal government responsibility.

In almost zero-degree weather, a group of unemployed people stand in line at a New York City relief kitchen in January 1934. The city-run kitchens served coffee and doughnuts to those in need. (AP/Wide World Photo)

MINNEAPOLIS—Several hundred men and women in an unemployed demonstration today stormed a grocery store and meat market in the Gateway district, smashed plate glass windows and helped themselves to bacon and ham, fruit and canned goods.

—from the *New York Times*, February 26, 1931

The 1920s in America seemed like an age of endless prosperity. Construction boomed, business flourished, and the stock market soared. Then on October 29, 1929, the stock market crashed. The crash sent shockwaves throughout the economy. Banks failed. Businesses closed. Millions found themselves out of work. The Great Depression, which would last through the 1930s, had begun.

U S HISTORY

When the Great Depression began, about 18 million elderly, disabled, and single mothers with children already lived at a bare subsistence level in the United States. State and local governments together with private charities helped these people. By 1933, another 13 million Americans had been thrown out of work. Suddenly, state and local governments and charities could no longer provide even minimum assistance for all those in need. Food riots broke out. Desertions by husbands and fathers increased. Homeless families in cities lived in public parks and shanty towns. Desperate times began to put into question the old American notion that if a man worked hard enough, he could always take care of himself and his family.

The effect of the Depression on poor children was particularly severe. Grace Abbott, head of the federal Children's Bureau, reported that in the spring of 1933, 20 percent of the nation's school children showed evidence of poor nutrition, housing, and medical care. School budgets were cut and in some cases schools were shut down for lack of

(Continued on next page)

Welfare

In 1996, Congress passed and the president signed into law a massive overhaul of our nation's welfare system. This *Bill of Rights in Action* focuses on welfare. The first article examines how welfare developed in this country. The second article explores the new welfare reform act. The third article takes a look at the Swedish welfare state.

U.S. History: How Welfare Began in the United States

U.S. Government: Welfare to Work: The States Take Charge

World History: "The Swedish Model": Welfare for Everyone

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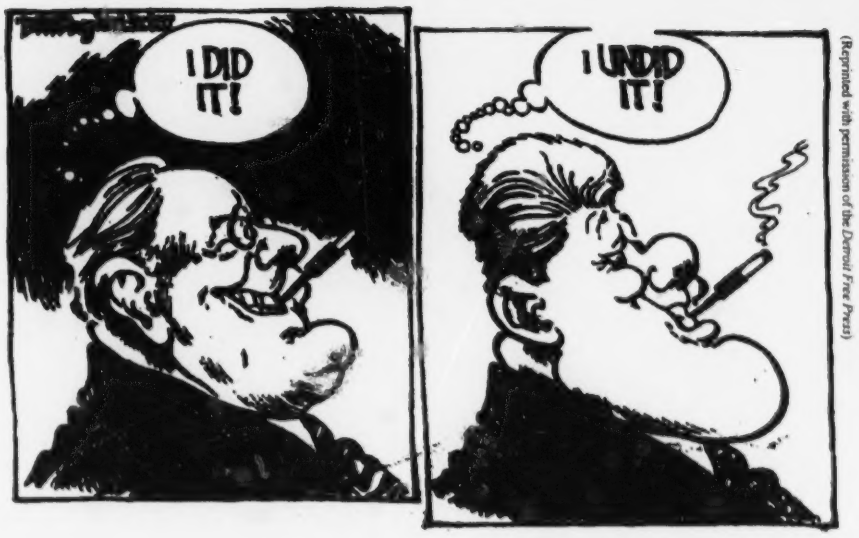
money to pay teachers. An estimated 200,000 boys left home to wander the streets and beg because of the poor economic condition of their families.

Most elderly Americans did not have personal savings or retirement pensions to support them in normal times, let alone during a national economic crisis. Those few able to set aside money for retirement often found that their savings and investments had been wiped out by the financial crash in 1929. Senator Paul Douglas of Illinois made this observation in 1936:



(Reprinted with permission of the *Detroit Free Press*)

> The impact of all these forces increasingly convinced the majority of the American people that individuals could not by themselves provide adequately for their old age, and that some form of greater security should be provided by society.

Even skilled workers, business owners, successful farmers, and professionals of all kinds found themselves in severe economic difficulty as one out of four in the labor force lost their jobs. Words like "bewildered," "shocked," and "humiliated," were often used at the time to describe increasing numbers of Americans as the Depression deepened.

Although President Franklin D. Roosevelt focused mainly on creating jobs for the masses of unemployed workers, he also backed the idea of federal aid for poor children and other dependent persons. By 1935, a national welfare system had been established for the first time in American history.

Most elderly Americans did not have personal savings or retirement pensions to support them in normal times, let alone during a national economic crisis

Welfare Before the Depression

A federal welfare system was a radical break from the past. Americans had always prided themselves on having a strong sense of individualism and self-reliance. Many believed that those who couldn't take care of themselves were to blame for their own misfortunes. During the 19th century, local and state governments as well as charities established institutions such as poorhouses and orphanages for destitute individuals and families. Conditions in these institutions were often deliberately harsh so that only the truly desperate would apply.

Local governments (usually counties) also provided relief in the form of food, fuel, and sometimes cash to poor residents. Those capable were required to work for the town or county, often at hard labor such as chopping wood and maintaining roads. But most on general relief were poor dependent persons not capable of working: widows, children, the elderly, and the disabled.

Local officials decided who went to the poorhouse or orphanage and who would receive relief at home. Cash relief to the poor depended on local property taxes, which were limited. Also, not only did a general prejudice exist against the poor on relief, but local officials commonly discriminated against individuals applying for aid because of their race, nationality, or religion. Single mothers often found themselves in an impossible situation. If they applied for relief, they were frequently branded as morally unfit by the

community. If they worked, they were criticized for neglecting their children.

In 1909, President Theodore Roosevelt called a White House conference on how to best deal with the problem of poor single mothers and their children. The conference declared that preserving the family in the home was preferable to placing the poor in institutions, which were widely criticized as costly failures.

Starting with Illinois in 1911, the "mother's pension" movement sought to provide state aid for poor fatherless children who would remain in their own homes cared for by their mothers. In effect, poor single mothers would be excused from working outside the home. Welfare reformers argued that the state pensions would also prevent juvenile delinquency since mothers would be able to supervise their children full-time.

By 1933, mother's pension programs were operating in all but two states. They varied greatly from state to state and even from county to county within a state. In 1934, the average state grant per child was $11 a month. Administered in most cases by state juvenile courts, mother's pensions mainly benefitted families headed by white widows. These programs excluded large numbers of divorced, deserted, and minority mothers and their children.

Few private and government retirement pensions existed in the United States before the Great Depression. The prevailing view was that individuals should save for their old age or be supported by their children. About 30 states provided some welfare aid to poor elderly persons without any source of income. Local officials generally decided who deserved old-age assistance in their community.

A National Welfare System

The emphasis during the first two years of President Franklin Roosevelt's "New Deal" was to provide work relief for the millions of unemployed Americans. Federal money flowed to the states to pay for public works projects, which employed the jobless. Some federal aid also directly assisted needy victims of the Depression. The states, however, remained mainly responsible for taking care of the so-called "unemployables" (widows, poor children, the elderly poor, and the disabled). But states and private charities, too, were unable to keep up the support

Roosevelt thought that the need for federal aid to dependent children and poor old people would gradually wither away as employment improved and those over 65 began to collect Social Security pensions.

of these people at a time when tax collections and personal giving were declining steeply.

In his State of the Union Address before Congress on January 4, 1935, President Roosevelt declared, "the time has come for action by the national government" to provide "security against the major hazards and vicissitudes [uncertainties] of life." He went on to propose the creation of federal unemployment and old-age insurance programs. He also called for guaranteed benefits for poor single mothers and their children along with other dependent persons.

By permanently expanding federal responsibility for the security of all Americans, Roosevelt believed that the necessity for government make-work employment and other forms of Depression relief would disappear. In his address before Congress, Roosevelt argued that the continuation of government relief programs was a bad thing for the country:

> The lessons of history, confirmed by the evidence immediately before me, show conclusively that continued dependence upon relief induces a spiritual and moral disintegration fundamentally destructive to the national fiber. To dole out relief in this way is to administer a narcotic, a subtle destroyer of the human spirit. . . .

A few months later, on August 18, 1935, Roosevelt signed the Social Security Act. It set up a federal retirement program for persons over 65, which was financed by a payroll tax paid jointly by employers and their workers. FDR believed that federal old-age pensions together with employer-paid unemployment insurance (also a part of the Social Security Act) would provide the economic security people needed during both good and bad times.

In addition to old-age pensions and unemployment insurance, the Social Security Act established a national welfare system. The federal government guaranteed one-third of the total amount spent by states for assistance to needy and dependent children under age 16 (but not their mothers). Additional federal welfare aid was provided to destitute old people, the needy blind, and crippled children. Although financed partly by federal tax money, the states could still set their own eligibility requirements and benefit levels. This part of the law was pushed by Southern states so they could control the coverage made available to their African-American population.

This is how welfare began as a federal government responsibility. Roosevelt and the members of Congress who wrote the welfare provisions into the Social Security Act thought that the need for federal aid to dependent children and poor old people would gradually wither away as employment improved and those over 65 began to collect Social Security pensions. But many Americans, such as farm laborers and domestic servants, were never included in the Social Security old-age retirement program. Also, since 1935, increasing divorce and father desertion rates have dramatically multiplied the number of poor single mothers with dependent children.

Since the Great Depression, the national welfare system expanded both in coverage and federal regulations. From its inception, the system drew critics. Some complained that the system did not do enough to get people to work. Others simply believed the federal government should not administer a welfare system. As the system grew, so did criticism of it, especially in the 1980s and '90s.

In 1992, candidate Bill Clinton, a Democrat, ran for president promising to "end welfare as we know it." In 1996, a Republican Congress passed and President Clinton signed a reform law that returned most control of welfare back to the states, thus ending 61 years of federal responsibility.

For Discussion and Writing

1. How did needy Americans get help before 1900?
2. Why did most states adopt "mother's pension" programs after 1910? In what ways were these pensions sometimes administered unfairly?
3. Did President Franklin D. Roosevelt view the Social Security Act's welfare provisions helping needy children and other dependent persons as permanent or temporary? Explain FDR's reasoning on this matter.

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A C T I V I T Y

Who Should Be Responsible for Welfare?

The debate still continues over who should be responsible for the welfare of destitute old people, disabled persons, and poor single mothers and their children.

1. Divide into small groups to discuss the four different positions on the responsibility for welfare that are listed below.
2. Each group should decide which position is the best and report its conclusions and reasons to the rest of the class.
3. The class should then vote on the four choices.
4. Finally, each student should write an editorial explaining why his or her choice is the most preferable.

Positions

A. Welfare should be a national government responsibility so that needy single mothers of dependent children, elderly, and disabled persons in every part of the country can get support when they meet certain qualifications.

B. Welfare should be a state government responsibility so that each of the 50 states will be free to design its own qualifications and levels of support.

C. Welfare should be the responsibility of charities, churches, and other non-profit groups.

D. There should be no welfare. Individuals should take care of themselves with the help of their families, friends, and neighbors.

Welfare to Work: The States Take Charge

When Congress and President Clinton approved the Personal Responsibility and Work Opportunity Act in 1996, they ended a 61-year federal welfare system that guaranteed cash and other benefits to needy families. The states are now trying to develop their own programs to move welfare recipients to work.

President Clinton on August 22, 1996 prepares to sign the welfare reform bill in the Rose Garden of the White House. Standing nearby are three former welfare recipients, Vice President Gore, and other political leaders. (AP/Wide World Photo)

The federal welfare system began in the 1930s during the Depression and grew steadily. When the federal Aid to Families with Dependent Children (AFDC) program began in 1936, it provided cash aid to about 500,000 children and parents. By 1969, the number had grown to nearly 7 million.

Over the years, Congress added new programs. President Lyndon B. Johnson's "War on Poverty" provided major non-cash benefits to AFDC recipients as well as to other needy persons. In 1964, Congress approved a food stamp program for all low-income households. The next year, Congress created Medicaid, a federal and state funded healthcare system for the destitute elderly, disabled persons, and AFDC families. In 1974, during the Nixon presidency, Congress established the Supplemental Security Income (SSI) program to provide aid to the needy elderly, blind, and disabled. This program made up the last major component of the federal welfare system.

By 1994, more of the nation's needy families, elderly, and disabled received federal welfare than ever before. Aid to Families with Dependent Children alone supported more than 14 million children and their parents. But as the welfare system grew, so did criticism of it.

The Welfare Trap?

Aid to Families with Dependent Children had drawn the greatest criticism of the four major federal welfare programs. By the 1990s, AFDC supported 15 percent of all U.S. children. In most cases, these children lived at home and were cared for by a single parent, usually the mother, who otherwise did not work. This situation brought on complaints that welfare let able-bodied adults avoid work and become dependent on government handouts.

Criticism of the AFDC program was further fueled by cases of children who grew up in families where no one ever had a paying job and who themselves became dependent on welfare as adults. Moreover, the AFDC program generated a vast bureaucracy, overlapping services, and endless regulations. All this placed an increasing burden on the nation's taxpayers.

Some of those criticizing AFDC were recipients themselves, 70 percent of whom collected a welfare check for less than two years. For many of these people, going on welfare was a humiliating experience of struggling through a maze of bureaucratic rules in order to feed, clothe, and house themselves and their children.

Others, however, saw welfare more positively. Although the program was not perfect, AFDC provided a relatively inexpensive safety net, which prevented people from falling into extreme poverty. Many of the people helped by welfare only needed it for a limited time. Those who needed it longer were usually those with few skills or with learning disorders or other disabilities. They also pointed out that AFDC made up less than 1 percent of the federal budget.

Welfare to Work

When Democrat Bill Clinton campaigned for president in 1992, he promised to "end welfare as we know it." Clinton wanted to help people make the

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transition from welfare to work. He proposed that anyone receiving welfare should go to work within two years.

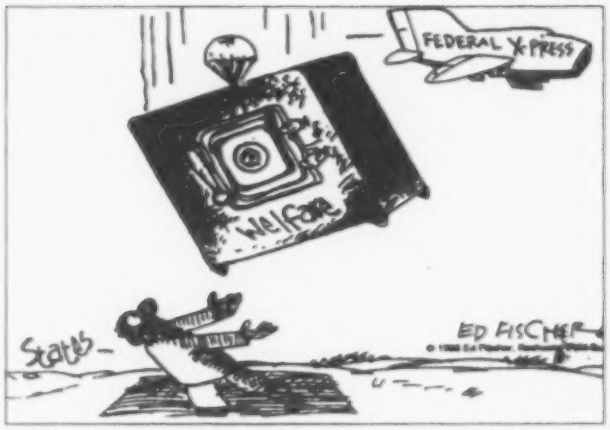
Although many Republicans favored this idea, critics in Clinton's own party saw two obstacles preventing welfare recipients from going to work. First, many on welfare could not find jobs because they didn't have skills or work experience. Second, those who could find work usually ended up in jobs that did not pay enough to support a family.

As president, Clinton worked to overcome these obstacles. He got Congress to enlarge the earned income tax credit. This allows low-wage earners who support a family to receive each year a sum of money from the Internal Revenue Service. Clinton also proposed that the government provide jobs for welfare recipients who couldn't find work. But Congress, with a new Republican majority, rejected this proposal.

Clinton and Congress continued working to find a compromise on welfare. In August 1996, after 18 months of debate, Congress passed and President Clinton signed into law the Personal Responsibility and Work Opportunity Act. This welfare reform law ended 61 years of AFDC guaranteed cash assistance to every eligible poor family with children. The new law turned over to the states the authority to design their own welfare programs and to move recipients to work.

Under the new law, AFDC was replaced by the Temporary Assistance for Needy Families (TANF) program, funded by federal block grants and state money. States are given wide discretion in determining eligibility and the conditions under which families may receive public aid. But Congress tied a number of strict work requirements to the federal block grants:

- Adults receiving family cash-aid benefits must go to work within two years. States may exempt a parent with a child under 1 for no more than 12 months.
- States had to have 25 percent of their welfare caseloads at work in 1997 and 50 percent of their caseloads at work by 2002. States who fail to meet these requirements will lose 5 percent of their federal block grants.



Under the new welfare law, the federal government has passed the responsibility for welfare onto the states.

- Each adult is limited to no more than five years of cash assistance during his or her lifetime. But states may exempt up to 20 percent of their caseloads from this limit.

The Personal Responsibility and Work Opportunity Act went beyond just imposing work requirements for poor families with children. Although food stamps remained a federal program, Congress reduced benefits for all welfare recipients and low-income working families. Congress also made eligibility standards more difficult for disabled children receiving Supplemental Security Income (SSI). Finally, Congress eliminated all SSI, food-stamp, cash-welfare, and Medicaid benefits for most legal immigrants.

Some voiced strong objections to such a massive change in the welfare system. Two members of the Clinton administration resigned in protest. They faulted Clinton for signing a bill that made no attempt to assure that every person on welfare would have a job. A study by the Urban Institute said that the new law would cause 10 percent of all American families to lose income and predicted that the new law would send more than 1 million children into poverty. Senator Edward Kennedy called the law "legislative child abuse." Many Democrats in Congress warned that the nation's social safety net, in place since the Great Depression, was in danger of falling apart. Others argued that the welfare reform act aimed more at punishing poor people than helping them out of poverty. A report by Catholic Charities, U.S.A., said that charities could not make up for estimated $15 billion per year in welfare cuts under this law. That

amount is more than the total charities currently receive in gifts in one year. Clinton himself, although thinking the law a major step in the right direction, viewed it as flawed. He promised to work to remove the flaws.

Others strongly support the new law. They think it will give those on welfare an incentive to get back to work and it gives states the means to experiment with different approaches to help people achieve this goal.

The States Take Charge

The persistent theme throughout the Personal Responsibility and Work Opportunity Act is putting welfare recipients into jobs. But this task is not as easy as it may seem.

Moving hundreds of thousands of people from welfare to work requires hundreds of thousands of jobs to be open. When jobs aren't available, local and state governments may have to create community-service jobs like cleaning public parks. Many welfare recipients are poorly educated, have few job skills, and lack the experience and discipline of going to work on a schedule. Thus, they may need extra help and training in getting and holding on to a job. Moreover, going to work costs money. Child care has to paid for, clothing purchased, and transportation arranged.

Of all the states, Wisconsin is probably the most advanced in moving welfare recipients to work. Before Congress acted in 1996, the state had already begun major welfare reforms on its own. Wisconsin's Republican governor, Tommy Thompson, together with Democrats in the state legislature, vowed to abolish welfare by 1999.

Wisconsin's welfare reform effort, called "Wisconsin Works," has the nation's strictest work requirements for adults receiving public aid. By the end of 1997, all adult welfare recipients had to be involved in some work-related activity. Even so-called "unemployables," like the mentally ill and drug addicts, had to report to therapy or rehabilitation sessions to try to make themselves job-ready. Only mothers with newborns under 3 months old were temporarily exempted from going to work. New welfare applicants had to first look for a job before collecting any cash aid. As a result of these requirements, Wisconsin succeeded in cutting 60 percent its welfare caseload by the end of 1997.

The success so far of "Wisconsin Works" relies not only on requiring welfare recipients to go to work, but also providing them with support as they make the transition from dependency to independence. Wisconsin pays for both child care and medical services for all low-income working families. The state also provides job training, helps pay the wages of certain workers in "trial jobs," and places those who cannot get hired into community-service work.

Because of all the support services, moving people from welfare to work in Wisconsin is expensive. The state's welfare budget is currently running 40 percent higher than it did under the old AFDC program despite the steep drop in the welfare caseload. Typically, a mother with two children who now works at a minimum wage job and also receives food stamps, child care, health insurance, and tax credits from the government earns the equivalent of about $16,500. Under AFDC she would have earned $9,500. The current U.S. poverty level income for a family of three is $13,330.

Like Wisconsin, the other states are creating their own pathways to try to get more people on welfare into jobs. Some, like Connecticut, allow a person to keep receiving a welfare check while also collecting a paycheck until the work income rises above the national poverty level. Other states impose severe penalties. For example, Mississippi is experimenting with cutting off all cash and food stamp benefits to families who do not comply with the new work requirements.

Key Issues Remain

A year after Congress passed the welfare reform act, the nation's welfare caseload had fallen almost 25 percent. But a number of key issues remained. One issue was resolved when President Clinton and Congress reached a federal budget agreement that restored SSI and Medicaid benefits to legal immigrants who had been in the country before the new welfare reform act became law. Here are some other welfare reform issues that are still being debated:

Should there be lifetime limits of five years or less on the welfare benefits families may receive?

Some people argue against lifetime limits. They say some parents and their children may need more than five years of benefits because of unforeseen events beyond their control (like a divorce, serious illness, or an economic recession). Others argue for lifetime limits. They say limits will prevent people from staying on welfare too long or going on and off throughout their lives.

Moving hundreds of thousands of people from welfare to work requires hundreds of thousands of jobs to be open.

Should able-bodied adults who don't have minor children and who are not working at least 20 hours a week be limited to no more than three months of food stamps in any three-year period?

No, say those who argue that this limitation mainly affects persons with no income other than food stamps who often take longer to find work because they have few employable skills or have minor physical or mental disabilities. Yes, say those who argue that this requirement is needed to motivate able-bodied adults to get a job.

Should it be harder for children with certain disabilities to qualify for SSI benefits?

An estimated 315,000 children, mainly with learning disabilities and behavior problems such as attention deficit disorder, will probably lose their SSI benefits because they will not meet the new eligibility standard. To get SSI benefits, children must now have "marked and severe functional limitations." This stricter standard resulted from claims that many of these children were not seriously impaired and that some parents were coaching their children to fake disabilities in order to collect from SSI.

Should welfare recipients who are assigned to community-service work be compensated at a rate at least equal to the minimum wage?

Unions and others say community-service workers deserve to be paid according to the same rules that apply to workers in private employment. The Clinton administration has ruled that the minimum wage rate for community-service workers is required by U.S. labor law. Many states, however, argue that hard-to-employ persons placed in community-service jobs are being adequately compensated by learning job skills while also collecting welfare benefits. They say that requiring the minimum wage for such jobs would significantly increase the cost of welfare reform in the states.

For Writing and Discussion

1. Do you think needy single mothers with preschool children should be required to get a job? Why or why not?
2. Why does it appear to be costing more to move welfare recipients into jobs than to maintain the old AFDC system that did not require work?
3. Do you think that the nationwide welfare reform effort is generally too harsh on poor people, too lenient, or just about right? Give reasons for your answer.

For Further Reading

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Katz, Jeffrey. "After 60 Years, Most Control Is Passing to States." *Congressional Quarterly Weekly Report*. Aug. 3, 1996: 2190-2196.

A C T I V I T Y

Welfare Reform Issues

1. Divide the class into four groups. Each group will be responsible for discussing one of the welfare reform issue questions listed at the end of the article.
2. Each student in a group should prepare to take a position on the group's issue question. But students might change their minds as the discussion takes place.
3. Each group will, in turn, discuss its welfare reform issue question while the rest of the class observes. One student in the group should introduce the question by explaining what it is about. This student should also have a number of questions prepared to help the discussion proceed. All members of the group should contribute to the discussion at least once.
4. During a discussion, one chair will be designated the "hot seat," which any student **outside** the group may take to contribute his or her ideas. This student must give up the "hot seat" when another student from outside the group wishes to participate.
5. The purpose of these discussions is to try to reach consensus on welfare reform issues. If consensus is not reached on a question, the class should vote on it after the discussion has concluded.

The "Swedish Model": Welfare For Everyone

Sweden has developed a social welfare system that has eliminated poverty by providing extensive government benefits to everyone. But taxes are high, and some doubt that this so-called "Swedish Model" can continue without major changes.

Goeran Persson, leader of the Social Democratic Party, has worked to maintain the Swedish welfare state. (AP/Wide World Photo)

The Swedish welfare state (also called the "Swedish Model") is based on the idea that everyone has a right to health care, family services, old-age pensions, and other social benefits regardless of income. Since everyone is entitled to these benefits, everyone must pay for them through their taxes.

Sweden began to build its welfare state early in the 20th century and greatly expanded it between 1945 and 1975. Up to the 1970s, the "Swedish Model" succeeded for several reasons. First, the Swedish economy grew steadily during this period. Second, Sweden did not participate in World War II and so, unlike other European nations, it did not have to make a painful recovery from the war. Third, its defense budget was small. Fourth, the country did not have to deal with any immigration problems. Sweden had a small population with a common cultural background. Swedes were proud that their little democratic society had seemingly found a "middle way" between socialism and capitalism.

WORLD HISTORY

Building the Welfare State

The welfare state has been the vision of the Swedish Social Democratic Party (SDP), which was founded in 1889. Formed by industrial workers, this political party rejected violent revolution (as in Russia) in favor of democratic social reform. The SDP aimed at building a system that would provide workers (and later all Swedes) with health insurance, old-age pensions, protection from unemployment, and other social benefits financed by taxes on workers and employers. The SDP called its vision for a welfare state the "people's home."

The SDP gained control of the government in the 1930s and remained in power for most of the following 60 years. In 1937, the Swedish parliament, called the **Riksdag**, created a national old-age pension program that remains as the backbone of the welfare state to this day.

The SDP did not want government to take over the ownership of businesses. Instead, SDP leaders realized that government could work with private enterprise, which would produce the economic growth necessary to make the "people's home" possible. Even today, after six decades of welfare-state development, 90 percent of the businesses in Sweden remain in the hands of private owners. Starting in 1938, the Swedish government began to engage in negotiating national wage agreements between employers and labor unions, which currently represent over 80 percent of the workers.

Following World War II, the SDP government greatly expanded the welfare state. It provided a long list of benefits for all citizens and even immigrant workers. It introduced a national compulsory health insurance system, which was later expanded to include dental care and prescription drugs. It passed into law low-cost housing, child-support payments to parents, child-care subsidies, a mandatory four-week vacation for all workers, unemployment insurance, and additional old-age pen-

Swedes were proud that their little democratic society had seemingly found a "middle way" between socialism and capitalism.

Because of the extensive number of benefits available to all age and income groups, poverty was virtually abolished in Sweden by the 1970s.

sion benefits. Most of these things were financed by sharp increases in employer social security taxes. But a booming economy with unemployment usually less than 1 percent made the new social welfare programs possible.

By the mid-1970s, the SDP had largely realized its vision of a "people's home" welfare state. All Swedes, regardless of need, could call upon the government to provide them with the benefits listed below. Most are available at no charge to the individual or family. Some "subsidized" benefits require persons to pay a partial fee, usually according to one's income.

Health and Sickness

1. subsidized doctor care mainly in county clinics
2. free public hospital treatment
3. subsidized dental care; free for children
4. subsidized prescription drugs; life-saving drugs free
5. free abortions and sterilizations
6. free maternity clinics for prenatal care
7. cash benefits to compensate for loss of most wages due to sickness; a separate benefit is available for workers injured on the job

Family Support

8. tax-free monthly payment to parents for each child; single parents receive an additional payment for each child
9. parents have a right to take a total of 12 months paid leave from work at near full wages to care for each child up to first year in school
10. subsidized child care at home or in a government day-care center
11. one year at a subsidized nursery school
12. unemployment insurance pays about 80 percent of previous income

Pensions

13. most retired persons receive three different kinds of old-age pensions paid for by taxes and employer contributions
14. full or partial disability pensions; disabled child pension goes to parents until age 16 and then directly to child
15. special payment to handicapped persons who are working or in school
16. surviving spouse and orphan pensions

A few additional kinds of aid are provided only to those who have low incomes. The most important of these are housing subsidies for poor families and elderly pensioners.

Because of the extensive number of benefits available to all age and income groups, poverty was virtually abolished in Sweden by the 1970s. But there are those who still need extra help during hard economic times or a family crisis. An example of the latter is the increasing number of single mothers who depend on temporary government cash aid. This "social assistance" (what we call "welfare") usually involves small amounts of aid provided for less than a year.

Benefits and Burdens

The Swedish welfare state has all but eliminated poverty, especially among the elderly and families with children. The typical married retired couple receives pension and supplemental payments that almost equal their pre-retirement income. This is much more than what a Social Security pension provides in the United States. The infant mortality rate in Sweden is five deaths for every 1,000 live births contrasted to seven deaths in the United States. Also, both male and female Swedes live longer than Americans.

While there is little doubt that the Swedish people have benefited from the "Swedish Model," they also have one of the heaviest tax burdens in the world. Today, an average Swedish working family pays about half its earned income in national and local taxes. Swedes also pay taxes on investment income. In addition, Sweden has a national 25 percent sales tax

that is built into the price of consumer goods. Beyond this, employers must pay corporate taxes and make payments into government pension, unemployment, and other social welfare funds. The resulting tax burden is so heavy that Swedes have a special word for it, **skattetrat**, which means "tax tiredness."

(Reprinted with permission of cartoonist Clyde Wells)

Government spending currently equals about 60 percent of Sweden's gross domestic product (the value of all goods and services purchased in a year). U.S. government spending by contrast accounts for about 20 percent of the U.S. gross domestic product. The Swedish government's fastest growing spending areas are health services and old-age pensions. Furthermore, public employment has rocketed to account for about one-third of all jobs in Sweden. (In the United States, the government supplies less than 5 percent of all jobs.)

Starting in the mid-1970s, the Swedish economy began to slow down. Among other things, Swedish exports had become too expensive due to the high wages and payments made by employers into the different government welfare-state programs. As economic growth slowed, Sweden found it increasingly difficult to pay for its system of social-welfare benefits.

Can the Welfare State Continue?

As inflation, unemployment, and the government budget deficit grew, many working people started to complain about the burden of paying for the expensive pension system. Others objected to the lack of choice in a society where the government runs almost all social services.

In 1991, a conservative government took control of the government and tried to rein in the welfare state. It cut some benefits as well as taxes. But these actions came during a world-wide recession, and unemployment in Sweden soared to an unprecedented 13 percent.

Fearing that the conservative government was going too far in cutting back the welfare state, Swedish voters returned the Social Democratic Party to power in 1994. Surprisingly, the SDP, the party that created the welfare state, announced a program of spending cuts and tax increases to reduce the government deficit. Late in 1997, however, with both the deficit and unemployment down, the SDP government reversed course and declared it was time to restore and even expand some social welfare benefits. But many doubt whether the "Swedish Model" of a welfare state that benefits everyone can continue at the level that most Swedes have come to expect.

Some Americans look to Sweden as a model for U.S. welfare programs. Others say that the "Swedish Model" would not work in the United States because the two countries are so different.

For Discussion and Writing

1. How is Sweden different from the United States? Do you think these differences would prevent the "Swedish Model" of welfare from working in the United States? Explain.
2. Sweden's welfare state has been described as a "middle way" between socialism and capitalism. What does this mean?
3. What similarities and differences are there between government social benefits in Sweden and the United States?
4. Why do Swedes say that they suffer from "tax tiredness"?

For Further Reading

Sander, Gorden F. "Sweden After the Fall." *The Wilson Quarterly*. Mar. 1, 1996:46+.

Wilson, Dorothy. *The Welfare State in Sweden*. London: Heinemann, 1979.

A C T I V I T Y

Welfare for Everyone?

Regardless of income, most Americans are entitled to Social Security old-age and survivor pensions, Medicare (at age 65), disability benefits, unemployment insurance, and worker's compensation. In Sweden, everyone has a right to a much longer list of social welfare benefits. Which, if any, of these benefits should be made available to everyone in the United States?

1. Form three groups. Each group will review Swedish social welfare benefits in one of these areas: Health and Sickness, Family Support, or Pensions. The specific benefits included in these three areas are listed in the article. (For larger classes, two groups may be assigned for each area.)
2. Each group is responsible for deciding which social benefits (if any) should be provided by the federal or state governments in the United States.
3. After deciding which benefits should be available in the United States, group members should then decide how to finance them: federal income tax, state income tax, employee payroll tax, employer payroll tax, sales tax, some other tax, or a combination of taxes. Benefits may also be "subsidized," requiring a partial fee to be paid by the beneficiary. Those groups that have chosen not to adopt any of the Swedish benefits should prepare reasons why they have decided this way.
4. Each group next reports what Swedish benefits the U. S. federal or state governments should provide and how these benefits should be financed. Groups that selected none of the benefits should give reasons why they decided to do this. After each group's report, other members of the class may ask questions or present their own views.
5. Following the group reports, the class should discuss and/or write a response to this question: Is welfare for everyone a good or bad idea? Why?

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POSTSCRIPT

ABOUT POSTSCRIPT

Thanks to your interest, ***Bill of Rights in Action*** (***BRIA***) remains one of CRF's most popular publications. Each quarterly issue of ***BRIA*** reaches 30,000 readers nationally with reproducible readings and activities in U.S. Government and U.S. and World History. Hopefully, ***PostScript*** will give you—our largest audience base—an opportunity to learn the latest from Constitutional Rights Foundation, its programs and publications, and related news from the world of civic participation and law-related education.

ABOUT CRF

Constitutional Rights Foundation(CRF) is a non-profit, non-partisan citizenship education organization with programs and publications in law and government, civic participation and service learning. Since 1962, CRF has used education to address some of America's most serious youth-related problems: apathy, alienation, and lack of commitment to the values essential to our democratic way of life.

Through a variety of civic-education programs developed by CRF staff, young people prepare for effective citizenship and learn the vital role they can play in our society. Empowered with knowledge and skills, our youth can interact successfully with our political, legal, and economic systems. CRF is dedicated to assuring our country's future by investing in our youth today.

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For more information about CRF programs and curriculum materials, please contact our office at (213) 487-5590; Fax (213) 386-0459; e-mail us at crf@crf-usa.org, or visit CRF's web site at www.crf-usa.org.

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If you found this issue of ***BRIA*** interesting, these CRF publications may also be of interest:

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Grades 9–12

The first volume of a new series, this 72-page supplementary text is divided into three units:

Unit I: Students place the problem of violence in a historical context, explore problems of violence today, and learn about causes and risk factors.

Unit II: Students examine how law and public policy at the national, state, and local levels seek to address the problem of violence. Students debate proposed solutions, including punishment versus prevention, gun control, curfews, and school uniforms.

Unit III: Students learn and practice violence prevention, including self-protection, conflict management, volunteering and conducting their own service-learning public safety projects.

A separate teacher's guide provides 21 interactive lessons based on the ***Challenge of Violence*** text. Included are directed discussions, role plays, simulations, and critical-thinking exercises. Also included are readings and procedures for guiding three "civil conversations" in which students conduct structured, Socratic-style discussions with their classmates on provocative issues.

- Illustrated with photos, graphs, and charts
- Useful for Government and Civics, 20th Century U.S. History, Contemporary Problems, and Law-Related Courses

To Promote the General Welfare

The Purpose of Law

Grades: 8–12

This five-unit illustrated volume explores legal issues in five crucial periods of American history: early America; War of 1812; Civil War; late-19th century urbanization; and the Roaring '20s. Students learn about problems of these eras, such as child labor and Prohibition, and engage in role-plays to deal with them. While exploring these periods, students compare historical legal issues with contemporary ones.

A teacher's guide provides an overview of methodologies, instructions for activities, answers to discussion questions, and objectives for each unit.

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NEW PUBLICATIONS FROM CRF

Adventures in Law and History

Upper-Elementary Grades

This new, two-volume curriculum provides upper-elementary teachers with motivating materials for teaching about law and effective citizenship. The lessons, set in American historical eras, engage students in cooperative-learning activities, role plays, simulations, readers theater, stories, and guided discussions, which introduce and reinforce law-related and civic education concepts and skills.

Both volumes are designed to meet the educational needs of a multi-cultural student population; emphasize basic, cognitive, and social-skill development; and promote the positive involvement of students in their schools and communities. Both illustrated volumes feature step-by-step teaching procedures, reproducible worksheet and activity masters, lessons linking the historical and law-related content to the present, and service-learning opportunities.

Adventures in Law and History I: Native Americans, the Spanish Frontier, and the Gold Rush

Rules and Laws, Property, and Authority

Unit I: Students visit a Native American Chumash village and discover how rules and laws derived from myth and tradition.

Unit II: Luisa, a girl living in a pueblo on the Spanish frontier helps students explore how law helps resolve conflicts over property.

Unit III: A hypothetical Gold Rush mining camp demonstrates how life might be like without effective authority. Students examine the role of the executive, the legislature, and the judiciary.

Adventures in Law and History II: Coming to America, Colonial America, and the Revolutionary Era

Equal Protection, Due Process, Authority, and the Rights and Responsibilities of Citizenship

Unit I: Students trace the immigrant origins of five families whose ancestors came to America seeking opportunity, freedom, and equality.

Unit II: Students visit a 17th century New England village to learn essentials of due process.

Unit III: Student explore the concepts of authority by helping a tired king rule his kingdom and view the causes of the American Revolution through the eyes of Bostonians.

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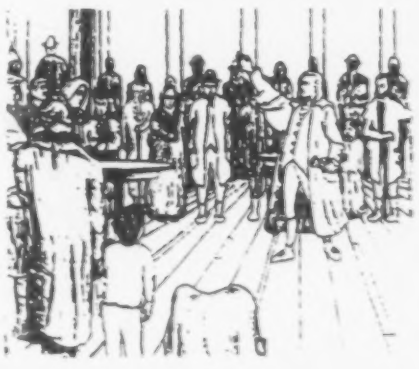

For more information on CRF publications, see our 1998 publications catalog or call (800) 488-4CRF.

CRF PROGRAM NEWS

Grants Available for Youth Service Projects

Thanks to continuing support from The Maurice R. Robinson Fund in New York City, Constitutional Rights Foundation is again sponsoring a **mini-grant program** for student-planned K–12 service-learning projects. Approximately 30 grants will be awarded. The typical grant is expected to be in the range of $400–$600. No award will exceed $1,000. Students should be involved in the planning of the projects, which should be carried out during the 1998-99 school year. **NOTE:** Applications must be postmarked by October 1, 1998.

For applications and more information about the Robinson Mini-Grant Program, contact Julie Glaser, Program Coordinator, CRF, (213) 487-5590, ext. 108.

Project Next Step to Assist Schools in Service-Learning Integration

Constitutional Rights Foundation has received three-year grants from the Corporation for National Service and the Ford Foundation to assist schools in integrating service learning and civic responsibility into the core academic curriculum. This program, **Project Next Step**, is an intensive national expansion model designed to establish a cadre of national trainers, provide staff development and follow-up support to teachers, and develop appropriate curriculum materials.

The goal is use CRF's CityYouth and Active Citizenship Today (ACT) as models to integrate service learning into middle- and high-school academic programs. Four national sites are chosen each year. The sites for 1998–99 will include locations in Las Vegas; Jackson, Mississippi; Philadelphia; and a site in New Mexico. Each site will send four educators to a "Training of Trainers" in Los Angeles. These four trainers will then—with the assistance of CRF staff—conduct trainings at their own sites for 16 other teachers.

For more information, contact: Kathleen Kirby, Program Director, CRF (213) 487-5590, ext. 139; Julie Glaser, program coordinator, ext. 108.

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CRF Launches Multimedia Competition

In 1997, Constitutional Rights Foundation launched **Free Expression in a Free Society**, a pilot program inviting 6th through 12th grade students to enter a special media competition that focuses on First Amendment issues. Students are asked to research and, utilizing their creativity, develop a 10-minute multimedia presentation on video exploring the rights and responsibilities of free expression. Along with their video, students include a summarized description of their topic with an annotated research bibliography.

Free Expression contestants can work individually or in a group. There are two categories: Juniors (6th through 8th grade) and Seniors (9th through 12th grade). Entries are submitted to CRF's History Day Program. Judges from Hollywood's entertainment industry review the top three entries in Junior and Senior categories. Last year's judges included Academy Award-winning director Robert Wise and actor Richard Dreyfuss. Winners receive a cash award and are invited, along with their parents and teachers, to a Beverly Hills screening of the winning documentaries. Currently Free Expression in a Free Society is open only to schools in California. Plans are being made to extend the competition nationwide. For more information, contact Andy Schwich, director of History and Law, CRF (213) 487-5590, ext. 126.

Interested in Service Learning?

CRF offers a resource packet containing materials for planning and implementing an effective service-learning project. The packet contains standards and methodologies for service learning, profiles of successful Robinson Mini-Grant projects, and detailed information on CityYouth and Active Citizenship Today, CRF's middle- and high-school service-learning programs. Also included are a copy of ***Network***, CRF's quarterly service-learning newsletter, the CRF publications catalog, and a service-learning bibliography.

Contact Julie Glazer, program coordinator, CRF (213) 487-5590 ext. 108.

FEEDBACK

We welcome your recommendations of themes for future issues of BRIA, conference listings, resource materials, publications you'd like to see reviewed, or curriculum and activities ideas. Send your feedback and information to crf@crf-usa.org. Thank you for your contributions and—most of all—for your dedication to youth.

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Youth and Police

Grades 6–9

Youth and Police is the perfect way to educate about the law, improve police-community relations, and involve middle-school youth in service-learning activities to improve public safety—all in one comprehensive package.

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The
BILL OF RIGHTS IN ACTION

CONSTITUTIONAL RIGHTS FOUNDATION FALL 1998 VOLUME 14 NUMBER 4

Blood and Tribute: The Rise and Fall of the Aztec Empire

The Aztec Empire rose to its peak of power and then collapsed under the assault of Cortes and his Indian allies, all in less than 100 years. The very ideas that drove the Aztecs to create a powerful empire ultimately caused its destruction.

This contemporary painting depicts the Pyramid of the Sun in the Aztec capital of Tenochtitlan. Identical staircases ascended to twin temples, one dedicated to the gods of sun and war, the other to fertility and rain dieties. Sacrifices were held at both temples. (Charles & Josette Lenars/Corbis)

Although he had been trained for war since childhood, the warrior could fight no more. He had been knocked senseless and dragged off the battlefield by an Aztec noble from the capital city of Tenochtitlan. The captured warrior expected to be executed on the spot by Aztec priests. Instead, he was marched back to Tenochtitlan. There, his Aztec captors dressed him in lavish clothing and worshiped him as a god. The captured warrior-god danced and sang in special rituals. He led processions through the city. Priests gave him delicacies to eat and brought him women to satisfy his sexual desires.

After months of preparation, the priests took the warrior-god to the Great Temple. The ultimate honor awaited him at the top of the pyramid stairs. Soon he would join Tonatiuh, the sun god. The warrior's whole life had prepared him for this glorious moment.

At the top of the pyramid temple, the warrior-god was greeted by the nobleman who had captured him. The sacred ritual was about to begin. Four priests seized the warrior-god's arms and legs and spread him on a stone altar. He stared up into the infinite blue sky. The chief priest raised his arm high and plunged a knife deep into the warrior-god's chest. With practiced motions, the priest thrust a hand into the wound, grabbed the warrior-god's heart and ripped it from his chest. He offered the still-pulsing heart to Tonatiuh, the sun god. Others shoved the lifeless body down the bloody stairs of the Great Temple. At the bottom, more priests cut off the head to display it with hundreds of others on a skull rack.

* * *

The nameless warrior described above represented hundreds of thousands of humans who were sacrificed to the gods during the time of the Aztec Empire. The Aztecs believed that the gods had given their blood to create human beings. They believed that in order to maintain the empire, they were obligated to return the

(Continued on next page)

WORLD HISTORY

Rulers, Policy, and Empire

This issue of *Bill of Rights in Action* examines codes, customs, and laws from pre-Columbian Mexico and ancient India and explores the aftermath of European rule in Africa to assess the impact of rulers, governments, and their policies. The first article looks at ideas that contributed to the rapid rise and fall of the Aztec empire. The second article explores a unique monarch's change of heart in ancient India. The third article explores the relationship between current U.S. policy in Africa and the lingering effects of European colonialism.

- **World History:** The Rise and Fall of the Aztec Empire
- **World History:** The Edicts of Asoka
- **U.S. Government:** Africa's "Second Independence" and U.S. Policy

This issue of the Bill of Rights in Action *is made possible by a generous grant from the W.M. Keck Foundation*

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A PRONUNCIATION GUIDE TO SOME AZTEC NAMES

Tenochtitlan (*tay-noch-tee-TLAHN*)

Tonatiuh (*toh-NAH-ti-uh*)

Nahuatl (*NAH-wah-tl*)

Mexica (*meh-SHEE-kah*)

Tepanecs (*TEH-pah-neks*)

Itzcoatl (*eets-koh-AT-tl*)

Huitzilopochtli (*wee-tsee-loh-POHCH-tlee*)

Moctezuma I (*mohk-teh-ZOO-mah*)

Ahuitzotl (*ah-weet-ZO-tl*)

blood to the gods. They sacrificed warriors captured in battle and other men, women, and even children to satisfy what they believed was the gods' voracious blood appetite. But the very beliefs that were intended to maintain the Aztec Empire contributed to its downfall.

The Mexica

The people who would become the Aztecs were latecomers to the Valley of Mexico, the area that now surrounds modern Mexico City. These fierce, Nahuatl-speaking people from the Chichimec culture began to arrive around 1200 A.D. from the north, a place they called Atzlan. Calling themselves the Mexica, these nomads from the north found most of the land already occupied by a sophisticated agricultural-based culture that dwelt in and around well-developed cities.

These city-dwelling agrarians, the Tepanecs, the Acolhuas, and the Culhuas, had already established themselves around Lake Texcoco and competed against one another for dominance in the region. These established groups shunned the Mexica as snake-eating barbarians. After they foolishly sacrificed the daughter of a Culhua king, the Mexica were punished and driven into exile. For years they were forced to wander in the wilderness. According to legend, their warrior god Huitzilopochtli led the Mexica to an island in a swamp. There they saw an eagle perched on a cactus with a snake grasped in its beak. Huitzilopochtli told the Mexica that this would become their homeland.

The Mexica drained the swamp and began to build an urban center that would soon become the Aztec capital of Tenochtitlan. Meanwhile, the Mexicas, known for being ferocious fighters, worked as hired soldiers for the powerful, well-established Tepanecs. But a new Tepanec king, fearing the military prowess of the Mexicas, initiated a series of attacks. The Mexicas, under their king, Itzcoatl, formed a war alliance with two other city-states and defeated the Tepanecs in 1428. The victory of this city-state trio, called the Triple Alliance, marks the beginning of the Aztec Empire. Today, use of the term Aztec usually refers to the Mexica and the empire they created.

Itzcoatl

The Mexica king Itzcoatl became the first of six Aztec emperors. He introduced revolutionary changes in Aztec life that drove the expansion of the empire for almost a century. Itzcoatl created an Aztec feudal system, much like that of Europe, that concentrated wealth, privilege, and political power in the hands of the emperor, his warriors, and other nobles. Itzcoatl distributed lands from the defeated Tepanecs to his warrior elite. He established a new structure of noble titles and privileges to reward warriors who took captives in battle. To support the new titled classes, Itzcoatl decreed that the common people owed them economic tribute, labor, and military service.

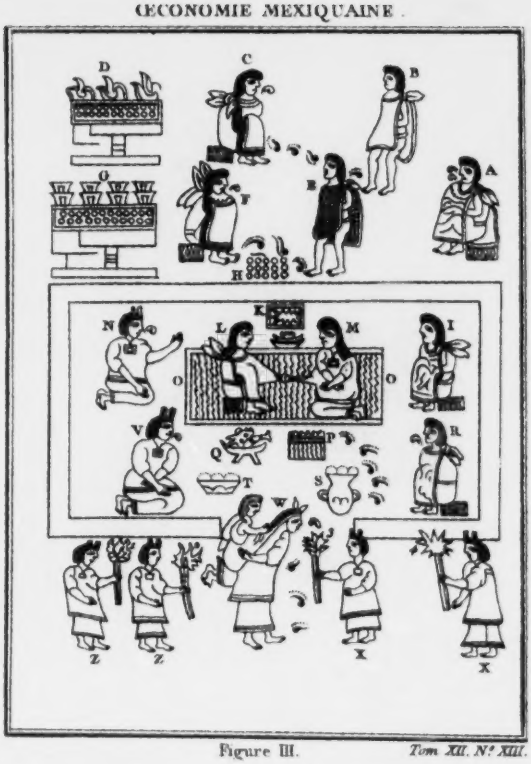
Itzcoatl rewrote history and altered the Aztec religion to justify an expanding empire. The warrior god of the Mexica, Huitzilopochtli, was elevated in importance to represent the sun god, Tonatiuh. The Aztecs became the "chosen people of the sun." Itzcoatl gave them the responsibility of keeping the gods and the world alive with a constant supply of human blood. The Aztecs and earlier peoples in Mexico had performed human sacrifices as part of their religion for many years, but Itzcoatl demanded much larger numbers of captive warriors to satisfy the blood thirst of Tonatiuh and other gods.

The Mexica king Itzcoatl rewrote history and altered the Aztec religion to justify an expanding empire.

How the Empire Worked

With his feudal and religious changes in place, Itzcoatl spent the rest of his life engaged in conquering other Aztec city-states in the Valley of Mexico. The Aztecs had no standing army. Instead, all Triple-Alliance males were pressed into service whenever a war began. Noble warriors gained status and wealth based on how many captives they took in battle.

Aztecs fought to kill, but more importantly, they fought to take captives. They believed that, if they died in battle, their souls would join the gods. Warriors usually fought one-on-one with spears and wooden swords embedded with deadly rows of sharpened obsidian (a form of volcanic glass).



Although they are remembered for their blood rituals, the Aztecs also developed extensive trade routes and an elaborate market system. This 16th century European engraving illustrates a series of Aztec economic interactions. (Corbis-Bettmann)

When he was victorious, Itzcoatl—and the emperors who followed him—would dictate an amount of tribute to be collected from the defeated city-state and install a trustworthy local noble as its new king. Under this system of indirect rule, life usually continued unchanged in a conquered city-state—as long as tribute flowed to the Aztec capital. Because the emperor controlled the Aztec kingdom so loosely, defeated city-states frequently revolted and had to be reconquered.

Most of the revolts against the empire took place because of resentment caused by the burden of the tribute system. Conquered city-states near Tenochtitlan were usually called upon to feed the Aztec capital's growing class of nobles. Other common tribute items included warrior's uniforms, animal skins, building materials, pottery, and firewood. The Aztecs also required conquered states to supply gold and copper, feathers, incense, paper, and cocoa beans, which were used as money. In addition, the Aztec emperor would demand laborers from the conquered city-states to build temples, aqueducts, and other public projects.

Expansion and Collapse of the Empire

After Itzcoatl's death in 1440, a group of Mexica royal advisers chose Moctezuma I to become the next Aztec leader. A nephew and close ally of the former ruler, Moctezuma I carried on Itzcoatl's warlike policies.

Moctezuma I strengthened the tribute system and began construction of the Great Temple of Tenochtitlan. He also issued a new legal code that emphasized the great differences between the nobility and the commoners. In addition, he organized a system of compulsory schools for all Mexica boys and girls. These schools helped indoctrinate them into the beliefs and rituals of the Aztec religion. Depending on their class, schooling prepared boys to become priests, government office holders, merchants, farmers, and craftsmen. All boys were trained to be warriors. Girls learned song, dance, and the skills necessary to become the mothers of Aztec warriors.

Toward the end of his reign, Moctezuma I had achieved what amounted to a **Pax Azteca** (Aztec Peace) in the Valley of Mexico. Because he and Itzcoatl had conquered so many city-states in the area, warfare among these lesser states ended. This enabled a widespread trade and market system to flourish. Aztec *pochteca*, or merchants, traded with people as far away as Central America, exchanging textiles, obsidian tools, medicinal herbs and dyes for unfinished goods that could be sold to Aztec artisans. This trade greatly increased the standard of living, even among the commoners.

The Aztec Empire reached its peak in size and power under Ahuitzotl, the fifth emperor. He also presided

(Continued on next page)

over the completion of the Great Temple of Tenochtitlan.

The Great Temple consisted of a massive pyramid topped by two temples: one for Huitzilopochtli, the warrior god and representation of the sun, and the other for Tlaloc, the god of rain, water, and fertility. Twin staircases went up one side of the pyramid to each temple where human sacrifices were performed. The Aztecs sacrificed more than 10,000 individuals in a dedication ceremony that lasted four days. The Great Temple was completed in 1487, five years before Columbus set out on his voyage of discovery.

By the time of Ahuitzotl, Aztec human sacrifices had taken on an additional political purpose. Kings and diplomats from the conquered city-states and the common people of Tenochtitlan were all forced to witness the gruesome rituals. These awesome demonstrations of Aztec power prevented many from challenging the elite class that ruled an empire of 3 million people.

When Moctezuma II, the sixth and last Aztec ruler, became emperor in 1502, the empire was already beginning to weaken. Moctezuma II spent much of his time attempting to reconquer city-states that had revolted against demands from the capital. The Mexica nobility increasingly denied any decision-making powers to Aztec commoners. This caused the commoners, who supported the nobility with payments of tribute and military service, to lose faith in their rulers.

The Aztecs had accomplished a great deal in a relatively short time. In less than a century, they built a city, extended existing trade routes, and devised an elaborate market system. They fed, clothed, housed, and educated millions of citizens. But finally, the empire simply began to bleed to death. Aztec wars and sacrifices to the gods had reduced the numbers of farmers, craftsmen, and other producers necessary to keep the empire thriving.

When Spaniard Hernando Cortes reached Tenochtitlan in 1519, he was amazed to find an island-city of 200,000 people with stone temples, royal palaces, and great houses all dwarfed by the sacred pyramid. The capital of the Aztec Empire was five times the size of London at that time. Yet, this impressive Mexica city only briefly hid the weaknesses of the empire from the Spanish. Cortes soon discovered that he could enlist the aid of other resentful Aztec city-states to defeat the "people of the sun."

It took a year of deal-making, intrigue, and warfare for Cortes to assemble an army large enough to assault the Aztec capital. In 1521, Cortes and his allied forces surrounded the island city. "It was useless to tell [the Aztecs]," Cortes wrote, "that we would not raise the siege. . . that there was nowhere whence they could procure maize, meat, fruit, water. . . . The more we repeated this, the less faintheartedness they showed."

For 85 days, the Aztec warriors fought the Spaniards and their Indian allies through the streets and canals of Tenochtitlan. Cortes estimated that the Aztecs lost over 100,000 soldiers. The fighting ended only after the last defenders were cut down. Today, the streets and buildings of Mexico City have engulfed the former capital of the Aztec empire.

For Discussion and Writing

1. How did "blood and tribute" drive the expansion of the Aztec Empire?
2. In what ways did Itzcoatl set the course for expanding the Aztec Empire?
3. What do you think was the most important reason for the collapse of the Aztec Empire? Why?

For Further Reading

Conrad, Geoffrey W. and Arthur A. Demarest. *Religion and the Empire, The Dynamics of Aztec and Inca Expansionism*. London: Cambridge University Press, 1984.

Smith, Michael E. *The Aztecs*. Malden, Mass.: Blackwell Publishers, 1996.

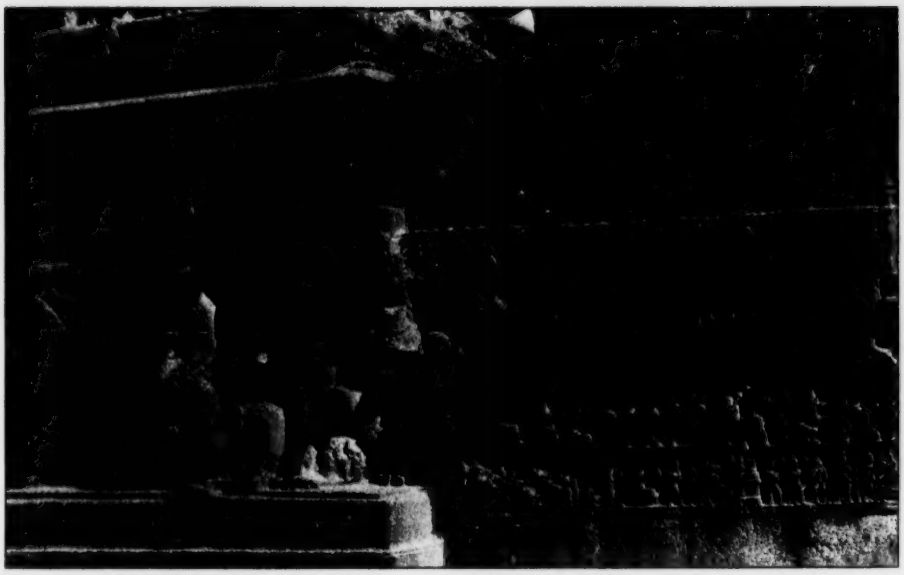
A C T I V I T Y

An Advisor Speaks to the Emperor

Imagine that you are an advisor to Moctezuma II on the eve of the Spanish conquest. Write a letter to the emperor describing 1) the problems the Aztec Empire is facing, 2) the consequences of these problems, and 3) what should be done about them.

The Edicts of Asoka

Asoka, one of the first rulers of ancient India, rejected military conquest in favor of spreading a philosophy of nonviolence and respect for others. Asoka's edicts, proclamations written on rocks and stone pillars, reveal him to have been a surprisingly forward-thinking monarch.



King Asoka was anxious to spread his newfound philosophy of compassion and nonviolence among his people. He commanded that his edicts be carved in stone similar to this 2nd century sculpture relating the tales of the Mahabahrata. (Charles & Josette Lenars/Corbis)

The rulers of ancient empires typically viewed themselves as all-powerful conquerors who were justified in using violence and fear to force people to submit to their will. Darius the Great of Persia wrote of himself this way: "I am Darius the Great King, King of Kings, King of countries containing all kinds of men, King in the great Earth far and wide. . . ."

But about 200 years after Darius died, a type of monarch the world had never seen before appeared in India. King Asoka (also known as "Ashoka") abandoned violence and fear and adopted reason and persuasion to rule his empire. We know this because of the large number of stone inscriptions that he left behind. Unlike the boastful Darius, Asoka tried to convince his subjects and people everywhere to treat one another with respect and compassion. While he was an absolute ruler like Darius, Asoka promoted ideas that would eventually become the foundation for modern societies like our own.

WORLD HISTORY

The Mauryan Empire

Alexander the Great, a Greek general from Macedonia, was one of the greatest conquerors of all time. By 297 B.C., Alexander and his huge army of foot soldiers, cavalry, and war elephants had conquered much of what is now India, Pakistan, and Afghanistan. King Asoka's warlike grandfather, Chandragupta Maurya, may have met Alexander the Great when the Greek conqueror forced his way into Northern India. Alexander's conquests may have inspired Asoka's grandfather. Twenty-four years after taking the throne, Chandragupta had unified the many different cultures, ethnic groups, languages, and religions of Northern and Central India. Chandragupta's kingdom became known as the Mauryan Empire.

After ruling for 24 years, Chandragupta became a Jainist. Jainism is a highly puritanical offshoot of Hinduism. Chandragupta abdicated the throne. He gave up all his possessions and wandered his empire until he died of slow starvation, a traditional way for Jainists to die.

King Chandragupta's son, Bindusara ("Destroyer of Foes"), inherited his father's throne. Bindusara continued his father's military campaigns and further expanded the Mauryan Empire. Bindusara had a number of sons, including Asoka. Bindusara appointed Prince Asoka as the governor of an important province. Asoka must have shown promise as a ruler. Bindusara apparently asked the young prince to put down disorders in another province governed by Asoka's older bother.

When Bindusara died, a period of turmoil followed. Evidently, Asoka and his brothers fought among themselves for title to the throne. With the support of his father's chief government ministers, Asoka took control of the empire. Four years later, in 269 B.C.,

(Continued on next page)

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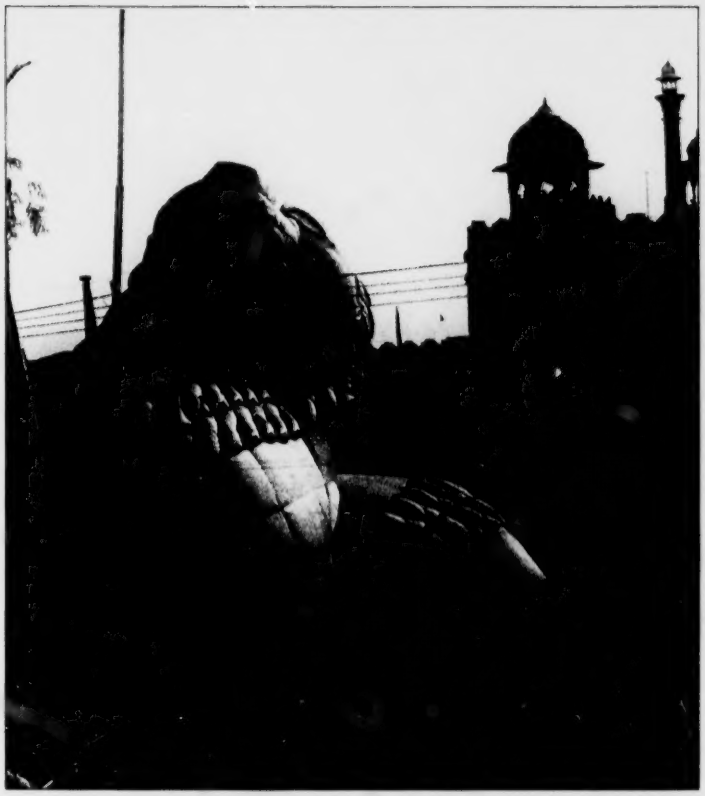
Asoka was officially crowned king. He was about 35 years old.

Asoka's empire was divided into four provinces that were, in turn, subdivided into smaller regions. Government officials were appointed to maintain strict control and to collect tribute and taxes from each of these regions.

A special class of senior officials, called *mahamattas*, were responsible to the king for keeping the villages, regions, and provinces running efficiently. The king gave independent authority to judicial mahamattas. These judges presided over civil and criminal cases and had the power to inflict fines, lashings, and capital punishment for severe offenses. All officials were chosen for their loyalty and were usually appointed by the king.

Although Asoka came to the Mauryan throne at a time of peace and economic prosperity, the great diversity of peoples within the empire threatened disunity. Asoka needed a common code of behavior to bind everyone together.



The edicts and imagery of King Asoka's reign have survived more than two thousand years. Here the Asoka lion, India's national emblem, floats over a celebration marking India's 50th year of independence from British colonial rule. (AP/Wide World Photo)

At the time of Asoka's coronation, Hinduism had been India's dominant religion for centuries. Hindus believe that all living creatures are reborn many times. They also believe that society is divided into strictly defined social classes, called *castes*. An individual's caste is determined by his or her birthplace, family, and occupation, and although many Hindus value the caste system for the cultural identify it gives them, the quality of life varies greatly from caste to caste. Thousands of castes divide Hindu society. The uppermost castes guarantee wealth, power, and privilege to nobles, warriors, and the rich, while members of the lowest caste, called *untouchables*, are condemned to hold the dirtiest jobs and have virtually no civil rights or opportunities for advancement. Today, education, legislation, intermarriage, and modern life are eroding the dominance of the caste system in India, but for thousands of years, the Hindu religion strictly forbade social interaction between castes.

The Enlightened One

Although the Hindu religion was dominant in India during Asoka's reign, a relatively new religion had begun to challenge the ancient Hindu beliefs. Siddhartha Gautama, called the *Buddha* ("Enlightened One"), lived in India two centuries earlier. Buddha taught that nonviolence, moderation in life, and dedication to the care of others led to enlightenment. He also questioned the need for the elaborate rituals in Hinduism and broke the caste rules by treating all people as equals. Siddhartha Gautama's followers were called *Buddhists*. After becoming a king, Asoka became a Buddhist.

Asoka's conversion to Buddhism may have influenced the way he chose to rule his kingdom. In the Mauryan Empire, the king's word was law. Asoka inherited absolute power. But Asoka chose to adopt a more paternalistic, or fatherly role as ruler. "All men are my children," he wrote. Unlike many ancient rulers who adopted a new religion, Asoka did not establish Buddhism as a state religion or insist that his subjects convert to it.

Dhamma

During the ninth year of his reign, Asoka decided to follow in the path of his father and grandfather and go to war. He marched on Kalinga. The kingdom of

Kalinga, located on the east coast of India, controlled major land and sea trade routes to the south. It was also one of the few regions in India that had never been conquered by the Mauryans.

Asoka apparently waged a war of annihilation on Kalinga. His warriors killed about 100,000 Kalingan soldiers in battles, and thousands of civilians suffered and died when the conquerors drove another 150,000 Kalingans from their homes.

Within several months of his victory, however, King Asoka made an amazing public declaration. He expressed sorrow and remorse for the slaughter and suffering that he had caused during his assault on Kalinga. He renounced wars of conquest. Although he retained his army, Asoka never went to war again.

What caused this dramatic turn in Asoka's life? During this period he was becoming a Buddhist, and the teachings of "The Enlightened One" must have had a profound effect on him. But there were other influences. Hindu, Jainist, and other religious thinkers, foreign visitors to the Mauryan capital, and personal remorse all seemed to contribute to Asoka's change of heart. King Asoka began to forge a set of ethics based on his new beliefs; he called this set of ethics *dhamma*.

To Asoka, dhamma was a way for people to treat each other and animals with respect. Dhamma was related to dharma, which is the fundamental law that Hindus, Buddhists, and Jainists believe applies to all beings. Dhamma included such concepts as respect and compassion for others, fair treatment of all, benevolence, non-violence, religious toleration, helping the unfortunate, and the humane treatment of animals. "It is having few faults and many good deeds," Asoka wrote.

The Edicts of Asoka

Asoka went beyond simply preaching abstract ideas. He attempted to give practical guidance to his subjects in edicts that he ordered inscribed on rocks and stone pillars for all to see. Called the Rock and Pillar Edicts, these stone documents were written in the language of the common people. By making the edicts accessible to everyone, Asoka tried to bind together the diverse peoples of his empire while he gave them a uniquely practical and compassionate code of ethics to live by.

Referring to himself only by the royal title "Beloved of the Gods," Asoka addressed most of his edicts to the people of the empire. One of the edicts expressed Asoka's remorse for the suffering he had caused the people of Kalinga:

> On conquering Kalinga the Beloved of the Gods felt remorse, for when an independent country is conquered, the slaughter, death, and deportation of the people is extremely grievous to the Beloved of the Gods and weighs heavily on his mind. What is even more deplorable to the Beloved of the Gods is that those who dwell there . . . all suffer violence, murder, and separation from their loved ones. Even those who are fortunate to have escaped . . . suffer from the misfortunes of their friends, acquaintances, colleagues, and relatives. This participation of all men in suffering weighs heavily on the mind of the Beloved of the Gods.

In two special edicts, he called upon his mahamattas in Kalinga to administer justice impartially and to gain the affection of the people, whom he called "my children." Most of the other edicts dealt with the welfare and happiness of all people based on Asoka's conception of dhamma.

King Asoka abandoned violence and fear and adopted reason and persuasion to rule his empire.

The following section summarizes a number of Asoka's edicts. The passages in quotations are translations of Asoka's own words.

"Thus speaks the Beloved of the Gods. . ."

Prohibitions

—No sacrifice of animals for religious rituals will be permitted in the capital.

—The slaughter and mutilation of specific animals and birds by anyone is forbidden.

—The king will no longer go on royal hunts.

—The king renounces victory by wars of conquest. The Beloved of the Gods considers victory by dhamma to be the foremost victory.

(Continued on next page)

Public Works

—Hospitals for people and animals will be built.

—Gardens for growing medicinal plants will be established.

—Wells, trees, and rest houses will be put along roads for the comfort of travelers and animals.

Human Relations

—People should obey their parents and religious elders.

—People should not mistreat their servants and slaves.

—People should be generous to religious persons, relatives, and friends.

Religion

—Religious sects "may dwell in all places."

—People should not attack the religious beliefs of others "so that men may hear one another's principles."

Welfare of the People

—My officials will attend to the welfare of the aged, the poor, and prisoners.

—My officials who are reporting the public's business will have immediate access to me at all times and places.

—My officials will make sure that the government of the empire is run efficiently for the welfare and happiness of the people.

Justice

—Judges will be independent and will exercise uniformity in procedure and punishment.

—Wrongdoers should be forgiven as much as possible.

—Capital punishment should be used with restraint and the condemned should have three days to appeal their sentence.

— "It is good not to kill living beings."

In his last edict, probably inscribed in 242 B.C., Asoka wrote: "The advancement of dhamma amongst men has been achieved through two means, laws and persuasion. But of these two, laws have been less effective and persuasion more so." Specially trained officials, called *dhamma-mahamattas* toured the empire regularly to assess the views of the people and to instruct them in the meaning of dhamma. King Asoka often toured with his dhamma-mahamattas. He also dispatched missionaries to foreign countries, "for I consider that I must promote the welfare of the whole world."

We know little about how thoroughly Asoka's edicts were accepted by his people. In his final inscriptions, titled "The Beloved of the Gods," Asoka seemed content that he had been successful. Asoka died in 232 B.C. after a reign of nearly 40 years. Apparently, Asoka's vision for a more humane world died with him. His successors ruled poorly, and the Mauryan Empire disintegrated and finally vanished in a little more than 50 years.

Asoka was largely forgotten until his rock and pillar inscriptions, which still exist today, were translated over 2,000 years later. While Asoka failed to change his world, most of his ideas proved to be timeless.

For Discussion and Writing

1. How were Asoka and Darius the Great different kinds of rulers? How were they similar?
2. How would you describe a person who lived his or her life according to dhamma?
3. What do you think was the single most important idea in Asoka's edicts? Why? Do you think Asoka overlooked any important categories in his edicts?

For Further Reading

Nikam, N. A. and Richard McKeon, eds. *The Edicts of Asoka*. Chicago: University of Chicago Press, 1965.

Thapar, Romila. *Asoka and the Decline of the Mauryas*. Oxford: Oxford University Press, 1963.

A C T I V I T Y

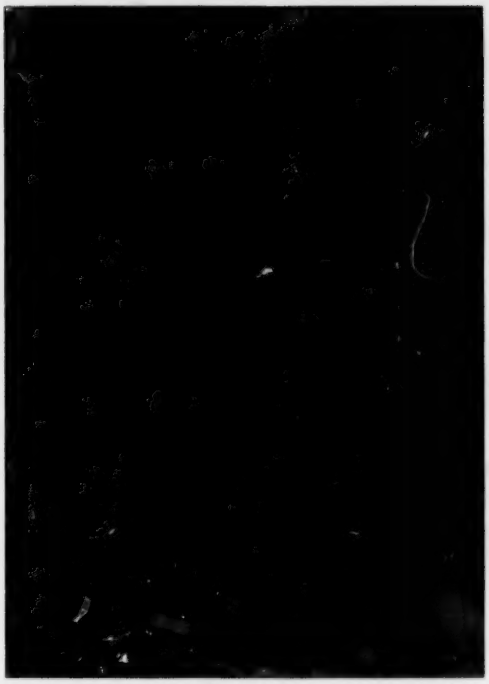
What Is Dhamma Today?

1. Form small groups. Every group will write six of their own edicts, one for each of the six categories of Asoka's Edicts listed in the article. The edicts should concern issues of today relating to the categories, but must also conform to the principles of dhamma as explained by Asoka over 2,000 years ago.
2. The groups should inscribe their edicts on butcher paper and post them around the classroom.
3. The members of each group should then explain why their six edicts are an expression of dhamma today.

Africa: Trying for a "Second Independence"

After gaining independence from European colonial powers, many African nations stagnated under brutal rulers and government-run economies. Today, many of these nations are striving to establish democratic rule and free-market economies. The United States and other developed nations are being challenged to create new policies to address this "second independence."

In the spring of 1998, President Clinton visited six African countries. His tour included a visit to the "House of Slaves" on an island in the harbor of Dakar, Senegal. A short tunnel runs under the structure, ending with a doorway opening out to the Atlantic Ocean. Tens of thousands of Africans passed through this portal, now called the "Door of No Return," on their way to slavery in America.



U.S. President Bill Clinton and Senegalese President Abdou Diouf stand in the infamous "Door of No Return" in a slave house on Senegal's Goree Island. Thousands of Africans passed through this door to be loaded onto slave ships bound for the New World. (AP/Wide World Photo)

U S GOVERNMENT

In Africa, Clinton apologized for slavery. "We were wrong in that," he said. He apologized for the support Washington gave dictators in the name of Cold War anti-communism. He apologized for the failure of the "international community" to respond quickly enough to the cries of genocide in Rwanda. "All over the world," Clinton said, "there were people like me sitting in offices, day after day after day, who did not fully appreciate the depth and the speed with which you were being engulfed in this unimaginable terror."

The past tragedy of slavery connects the United States and Africa. But does the United States have any important interests in Africa today? As African nations try to progress, what should our role in that continent be?

"Second Independence"

Africa is a vast continent containing more countries than any other continent in the world. It's the homeland of hundreds of ethnic groups with different cultural traditions, languages, and religions. European nations such as Great Britain and France colonized much of Africa, starting in the 1700s. In the 1880s, as economic and political rivalry increased in Europe, nations like Great Britain, France, Germany, Belgium, and Italy raced each other to lay claim to huge African territories rich in minerals, petroleum, rubber, coffee, and other resources. Most African rulers yielded to the ambitions and military power of the Europeans. Others fought wars of resistance, but by 1914, Europeans ruled more than 90 percent of Africa's territories and more than 80 percent of its people.

The Europeans drew arbitrary boundary lines separating their colonial possessions to suit their own purposes while ignoring the cultural differences among Africa's many distinct ethnic groups. As a result, some groups found themselves split up into two or more colonies while others were forced to live in the same colony with people they disliked. These boundary lines would create a great deal of trouble in the future for the people of new African nations like Rwanda, Burundi, and Somalia.

European domination of Africa continued until after World War II, when many of the European colonial powers had been weakened by the ravages of global warfare. The demand for independence became a mass African movement. At this point, the European powers in Africa had to choose between granting independence to their colonies or fighting expensive colonial wars. Most chose to relinquish control of their former colonies. By the 1980s, all of Africa was independent except for South African-controlled Namibia. South Africa, although under minority white rule until 1994, had been politically independent since it had withdrawn from the British Commonwealth of Nations in 1961.

Many modern African nations gained independence during the late 1950s and 1960s, a period of intense Cold War hostility between the United States and the Soviet

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Union. In an attempt to extend their spheres of influence, the two Cold War adversaries offered large grants of economic and military aid to more than 40 African nations who were emerging from European colonial rule.

U.S. Marines force a lone gunman to lay down his weapon during a December 1992 peacekeeping mission in the Somali capital of Mogadishu. (AP/Wide World Photo)

Drawing heavily on the foreign aid offered by the Soviet Union and the United States and their allies, many of the new African nations tried to educate their people and to establish self-sufficient economies. However, most failed to effectively develop their economies or political systems. Instead, they often turned to a government-run economic system that was frequently based on the old European colonial models and that permitted an elite few to get rich while the majority of people sank deeper into poverty. More often than not, the new African governments fell into the hands of military strongmen, who overthrew one another to gain power for themselves.

When the Soviet Union collapsed in 1991 and the Cold War ended, the economic and military aid that many African nations had come to depend upon started to disappear. Africans soon realized that they would have to adjust to a global economy that was becoming increasingly competitive.

During the last few years, some 35 African countries have loosened government control of their economies and moved toward free-market, capitalist economies. At the same time, about 20 of these nations have held multi-party elections. New leaders have emerged in countries like Uganda, challenging the old pattern of military rule. Africans call these attempts to establish democracy and economic reform their "second independence." In order to achieve this second independence, they must erase the legacy of European colonialism, the influences of the Cold War, and the more recent misrule by Africans themselves.

Africa south of the Sahara Desert is the poorest region on Earth. Unemployment is high and workers with jobs earn an average wage of only $450 a year. Governments are burdened with foreign debt. Ancient hatreds pit ethnic groups against one another, sometimes resulting in mass bloodshed bordering on genocide. In Rwanda, 500,000 people were slaughtered in 1994. Moreover, most African countries still do not have democratically elected governments that respect human rights.

Despite their problems, the nations of Africa hold great promise for the future. Resources such as oil, water power, and minerals have never been fully developed for the benefit of the people. With irrigation, millions of acres of land could be cultivated for both food and export crops like coffee and cocoa. Under new reforms and better leadership, the economic growth rate in Africa has doubled since 1990. Also, Africa's total population of 750 million people is an inviting market for producing and trading nations like the United States.

Uganda: Making Progress

Located in central Africa and bordering part of Lake Victoria, Uganda is one of the growing number of African countries trying to achieve a "second independence."

Uganda briefly became a republic after securing independence from Great Britain in 1962. But in 1971, General Idi Amin seized power and established one of Africa's most brutal regimes. After systematically murdering 300,000 of his opponents, Amin was named "president for life" in 1976. Ugandan rebels and forces from neighboring Tanzania finally overthrew Idi Amin in 1979. The country continued to suffer, however, under a series of incompetent military rulers. Fighting among Uganda's different ethnic groups also plunged the country deeper into violence and poverty.

In 1986, a resistance movement seized control of the national capital and installed Yoweri Museveni as president. Unlike previous military strongmen, Museveni acted to defuse ethnic hostility in Uganda. He successfully integrated soldiers from Uganda's diverse ethnic groups into one army. Museveni reinstated political parties but banned any party that represented just one eth-

nic group. In addition, candidates for political office were required to run on their personal qualifications rather than as the representatives of a political party. A new constitution was approved by Ugandan voters in 1995. Musveni won a 1996 election that international observers judged to be free and fair. Multi-party elections are scheduled to start in the year 2000.

Uganda still has a long way to go before achieving a real democracy. Despite efforts to build Uganda into a showcase of political and economic reform, Museveni's government is still battling two rebel factions in Uganda's remote northern regions. The rebels claim that their mission is to force Museveni to accept multi-party democracy. Museveni's government refuses to negotiate with the rebels. "You cannot sit down with a highway robber to discuss the governance of the state," explained one of Museveni's statesmen.

The 12-year civil war has taken its toll. More than 100,000 people have died, many of them women and children. The northern infrastructure has collapsed, agriculture has come to a standstill, and Uganda is still burdened by foreign debt amounting to more than $2 billion.

Despite its problems, Uganda is making progress. During his 1998 visit, President Clinton stressed that Uganda has come a long way and deserves to be considered as a legitimate trading power. Starting in 1991, Uganda slowly began to shift some government businesses over to privately-owned enterprises. Uganda shows promise as a trading partner with resources in cotton, coffee, and tea, copper mining, a textile industry, and one of the largest fresh water fisheries in the world. Moreover, the per capita income of Ugandan workers has grown to $900 per year, twice that of African workers overall. Further improvement of Uganda's worker income could increase the market for trade goods from countries like the United States.

Somalia: Frustrated Intervention

Somalia faces Saudi Arabia across the narrow waters of the Gulf of Aden, the gateway to the Red Sea. Ancestors of present-day Somalis were converted to Islam by Arabs who settled along the coastline before the 1300s. Like many African nations, Somalia underwent a period of European colonization during the 19th century. France, Great Britain, and Italy all occupied Somalia and struggled for dominance in the region from the 1860s through World War II. In 1960, Somalia declared itself a democratic republic.

In 1969, Somalia's president was assassinated in a military coup. The army and police suspended the constitution, the cabinet, and the national assembly. It abolished all political parties while army officers replaced civilian district officials. By the early 1990s, Somalis had ousted Mohamed Siad Barre, a dictator who had coaxed arms and money from Cold War superpowers. Immediately after Barre was deposed, the rebels who ousted him broke into hostile factions.

These factions reflected ancient rivalries between nomadic herders and farmers. Organized along clan lines, the conflict between herders and farmers was sharpened by blood ties. The clans tolerated no interaction that might break down the barriers between herder and farmer. Over the centuries these exclusive, family-based clans gradually defined every aspect of Somali life. Political power, occupations, the boundaries of neighborhoods were all determined along clan lines. In the early 1990s, fueled by a drought and clan rivalries, Somalia fell victim to famine and civil war.

In December 1992, American troops arrived in Somalia to strengthen a small contingent of United Nations forces. Their objective was to administer relief efforts and establish stability in a country torn apart by starvation, disease, and warring clans. American strength, always part of a United Nations contingent, built to 26,000 troops.

The U.S.–U.N. intervention in Somalia was considered by many to be a disaster. Thirty American troops and more than 100 U.N. personnel were killed in combat with heavily armed clans. The mission to provide health care and feed the victims of famine and war was frustrated by secrecy, hoarding, and sabotage. Critics accused the United States of using humanitarian motives to cover attempts at controlling Somali oil resources and smothering the spread of Islamic fundamentalism. In 1995, after more than two years of occupation, President Clinton ordered U.S. troops to withdraw from Somalia. The rest of the United Nations contingent followed suit soon after.

Currently, the country is still divided among rival warlords and remains without a central government. "Somalia is seen as a failed operation," said a U.N. commissioner for human rights. "I don't know if the international community is willing to invest more."

Others insist that the Somalia missions should not be so coldly dismissed. United Nations and U.S. intervention

(Continued on next page)

saved hundreds of thousands from starvation and offered health care and assistance to thousands more displaced by years of civil war.

Trade Not Aid

During his tour of Africa in March 1998, President Clinton spoke of a new relationship with countries like Uganda and Somalia that are striving for their "second independence." Clinton called for legislation that would encourage increased investment and improve trade relations with those African nations making progress in free-market and democratic reforms.

The Clinton administration submitted a trade bill to Congress called the Africa Growth and Opportunity Act. Designed to spur economic development in Africa, the proposed legislation would lower U.S. tariffs and quotas on textiles and other trade products from African nations that can demonstrate that they are moving toward democracy and developing a free market economy.

The Africa trade bill also requires African nations to drop their restrictions on trade with the United States. Currently, the United States supplies only 7 percent of the goods and services that Africans purchase. African exports to the United States—mostly oil—account for just 2 percent of all U.S. imports. The Africa trade bill would attempt to increase these figures.

This trade bill contains other objectives. For example, it would replace the previous emphasis on direct financial aid and loans. This provision drew criticism from Nelson Mandela, South Africa's president. Mandela told President Clinton on his recent trip to Africa that many African nations are not yet ready to stand alone in the world market. They still need economic aid and debt relief in order to reach a position where they can begin to develop their economies.

U.S. companies and unions also fear that the bill's lowered tariffs would allow a flow of cheap textile imports into the United States. These low-priced imports might take away jobs and income from the American textile industry. Others claim that a bill that allowed increased U.S. exports to African countries would create jobs in the United States.

Speaking before a group of Ugandan school children, President Clinton declared that "perhaps the worst sin America ever committed about Africa was the sin of neglect and ignorance."

While Africa is struggling with its second independence, developed industrial nations like the United States are grappling with policies that might help reverse the trends caused by exploitation and neglect visited upon Africa during the previous centuries.

For Discussion and Writing

1. What is the difference between Africa's independence from colonialism 40 years ago and the "second independence" many African nations are trying to achieve today?
2. How did the Cold War cause many African nations to become dependent on foreign aid and loans?
3. Do you think Congress should pass the Africa Growth and Opportunity Act? Why or why not?

For Further Reading

"Africa." *Current History* May 1998.

McGeary, Johanna and Marguerite Michaels. "Africa Rising." *Time* 30 Mar. 1998: 34-46.

A C T I V I T Y

What Should Our Role in Africa Be?

Form small groups, each of which will become a committee to advise the president on what the U.S. role in Africa should be. Below are listed four policies on Africa for the committees to consider. Each committee may choose one or any combination of these policies as well as other ideas to recommend to the president. After discussing the four policies and deciding on a recommendation, each committee will report its conclusions and reasoning.

1. The United States does not have sufficient interests to justify a major involvement or interference in the affairs of African nations.
2. The United States should adopt a "trade not aid" policy in which we reduce tariffs and quotas on African trade goods when African countries make progress in becoming more democratic and moving toward free-market economies.
3. The United States has a human rights obligation to join with other nations to suppress ethnic bloodshed and brutal dictators in Africa.
4. The United States should grant economic aid and forgive loan debts to help African countries overcome their poverty.

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Stop the clock on the Countdown to Doomsday! Separate fact from fiction! Put your media skills to work by stepping into the shoes an investigative reporter. Your assignment: Investigate the claim that a dangerous asteroid may soon hit Earth. Act quickly. The welfare of millions may depend on your journalistic abilities.

By responding to this provocative challenge, students begin an exciting, self-directed odyssey through "Countdown to Doomsday." In this activity, students take on the role of investigative reporters to apply the skills they learned in ***The Challenge of Information***.

In "Countdown to Doomsday," students review a tabloid story about asteroids and what measures should be taken to protect Earth from imminent asteroid bombardment. They research the topic to separate fact from fiction, write an accurate feature story and a balanced editorial on the topic, using source material from the "Countdown to Doomsday" web site **(www.crf-usa.org)**. Finally they submit their work to the "editor," their teacher, who evaluates it using model answers.

To participate in "Countdown to Doomsday," students complete a multiple-choice assessment component for ***The Challenge of Information***. Correct answers provide students with a secret code that gives them access to the "Countdown to Doomsday" web site.

Note: Teachers are invited to select one feature story and one editorial from each class and forward the names to Constitutional Rights Foundation for recognition on a special page of the CRF web site.

Impeachment Inquiry Resources on Internet

In an attempt to address issues raised by the Clinton impeachment proceedings, Constitutional Rights Foundation has developed **"Impeachment: Classroom Resources"** for the Internet. This comprehensive survey of the impeachment process includes:

- "Impeachment Links," writing and research on the impeachment process using the Internet.
- "The Impeachment of Andew Johnson," reading and activity.
- "High Crimes and Misdemeanors," a role-play activity in which students decide the outcome of a hypothetical impeachment proceeding.
- "Independent Counsel," a review of the definition, range of authority, and implications of special prosecutors, including the historical background and tactics used in the Starr investigation.

Teachers and students can find "Impeachment: Classroom Resources" on the CRF web site at **http://www.crf-usa.org**.

CRF Builds Research Links Library on Internet

In an effort to augment student research efforts and encourage a more focused approach to Internet browsing, Constitutional Rights Foundation has recently added two Research Links pages to its web site at **www.crf-usa.org/research.html.** These pages give students instant access to a variety of research-oriented links. Categories include: Book Reviews, Statistics and Facts, Newspapers, Magazines, Periodical Indexes, Broadcast Media, Government, Issues, Search Engines, Libraries, Law, Think Tanks, Experts, Disinformation, Writing Papers, and more.

CRF Launches Multimedia Competition

Is the press required by law to be fair and accurate? Should violence and pornography be banned from the Internet? Should cameras in the courtroom be banned? Can we say ***anything we want*** under the First Amendment? In short. . .What is free expression in a free society?

Each summer, CRF invites middle- and high-school students to enter **"Free Expression in a Free Society,"** CRF's exciting, new multi-media competition. In "Free Expression in a Free Society," students are asked to exercise both research and presentation skills to develop a 10-minute multimedia presentation exploring the rights and responsibilities of free expression.

Judges from Hollywood's entertainment industry review "Free Expression" finalists. Winners receive a cash award and are invited, with parents and teachers, to a Beverly Hills screening of the winning documentaries. ***For more information,*** contact Andy Schwich, Director of History and Law, CRF (213) 487-5590, ext. 126.

January CityYouth Training to Be Held in Sunny California

LOS ANGELES—Join the national CityYouth training team! CRF is accepting applications for the **CityYouth Training of Trainers** to be held January 15–16, 1999 in sunny Santa Monica. This training will provide educators with the knowledge and tools to conduct CityYouth workshops and trainings in their own districts. Sponsored by the Carnegie Corporation, the Ford Foundation, and the Corporation for National Service, this intensive training is open to all middle-school educators interested in integrating civic responsibility and service-learning into the four core academic disciplines. For more information call the CityYouth staff at (213) 487-5590 ext. 121 or e-mail **gregorio@crf-usa.org**.

About CRF

Constitutional Rights Foundation(CRF) is a non-profit, non-partisan citizenship education organization with programs and publications in law and government, civic participation, and service learning. Since 1962, CRF has used education to address some of America's most serious youth-related problems: apathy, alienation, and lack of commitment to the values essential to our democratic way of life.

Through a variety of civic-education programs developed by CRF staff, young people prepare for effective citizenship and learn the vital role they

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can play in our society. Empowered with knowledge and skills, our youth can interact successfully with our political, legal, and economic systems. CRF is dedicated to assuring our country's future by investing in our youth today.

EVENTS

CRF and CRF-Chicago Scheduled for Dual Splashdown at NCSS Conference

ANAHEIM, CA—The Los Angeles and Chicago offices of Constitutional Rights Foundation have been invited to conduct 15 presentations at the **78th National Council for the Social Studies Annual Conference**. The conference is scheduled for November 20–22nd at the Anaheim Convention Center, just across the street from Disneyland. Organizers of this year's NCSS Conference have asked presenters to address the theme **Toward a Humane World: *Making a difference with social studies.***

At NCSS 1998, writers, program directors, and other trained staff members from Constitutional Rights Foundation will conduct a wide variety of interactive sessions on CRF materials and programs. See the schedule for CRF's 55-minute sessions on this page.

CRF'S THURSDAY PRE-CONFERENCE PRESENTATION AT NSSSA

9:30–12:00 Noon	**Active Service Learning**	La Jolla–Marriot
9:30–12:00 Noon	**Teaching Teachers to Lead Productive Class Discussions**	Desert Spring–Marriot

CRF'S FRIDAY SESSIONS AT NCSS

2:30–3:25 pm Center	**From Bunker Hill to Gold Flats**	Room E7–Convention
4:50–5:45 pm	**Making Your Government Class Come Alive Through Service Learning**	Grand Ballroom A–Marriott

CRF'S SATURDAY SESSIONS AT NCSS

9:25–10:20 am	**Service Learning and Citizenship**	Grand Ballroom D–Marriott
9:25–10:20 am	**The Challenge of Violence**	Grand Ballroom G–Marriott
10:35–11:30 am	**The Challenge of Information**	Grand Ballroom K–Marriott
11:45 am–12:40 pm	**Youth and Police**	Grand Ballroom K–Marriott
3:40–4:35 pm	**Teaching About Criminal Justice in America**	Manhattan–Hilton
3:40–4:35 pm	**CityYouth, Civic Participation, and Middle-School Reform**	Grand Ballroom H–Marriott

CRF'S SUNDAY SESSIONS AT NCSS

8:25–9:20 am	**Controversial Issues**	Palos Verdes A–Hilton
9:35–10:30 am	**Law and Citizenship in World History**	Grand Ballroom A–Marriott
9:35–10:30 am	**Keeping Cool: Self-Control On and Off the Field**	Avila A–Hilton
1:05–2:00 pm	**The American Jury Bulwark of Democracy**	Huntington A–Hilton
1:05–2:00 pm	**Teaching Middle and High School Students How to Discuss Controversial Issues**	Avila B–Hilton

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For more details about publications and materials available from CRF, call (800)488-4CRF or visit our web site at **www.crf-usa.org.**

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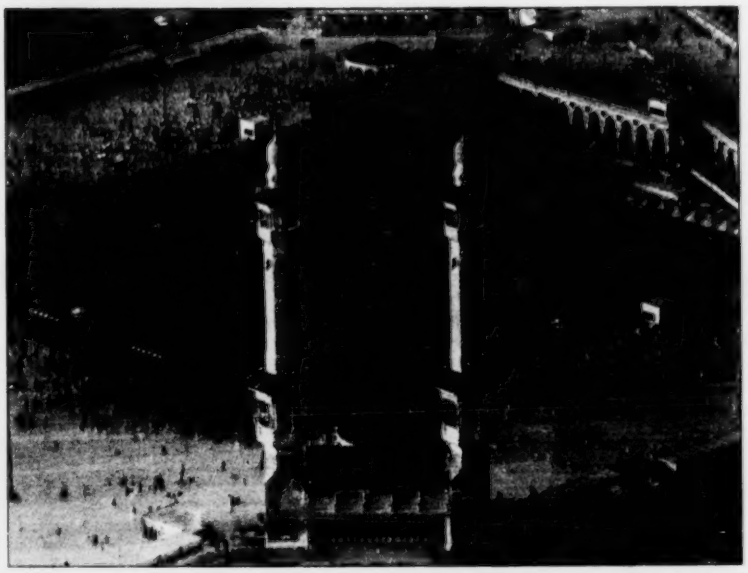
The Origins of Islamic Law

Islamic law represents one of the world's great legal systems. Like Judaic law, which influenced western legal systems, Islamic law originated as an important part of the religion.

Sharia (shuh REE uh), an Arabic word meaning "the right path," refers to traditional Islamic law. The Sharia comes from the Koran, the sacred book of Islam, which Muslims consider the actual word of God. The Sharia also stems from the Prophet Muhammad's teachings and interpretations of those teachings by certain Muslim legal scholars. Muslims believe that Allah (God) revealed his true will to Muhammad, who then passed on Allah's commands to humans in the Koran.



Muslims gather at the grand mosque in Mecca, Saudi Arabia, during the final day of the annual Muslim pilgrimage. (AP Photo/Kamran Jebreili)

Since the Sharia originated with Allah, Muslims consider it sacred. Between the seventh century when Muhammad died and the 10th century, many Islamic legal scholars attempted to interpret the Sharia and to adapt it to the expanding Muslim Empire. The classic Sharia of the 10th century represented an important part of Islam's golden age. From that time, the Sharia has continued to be reinterpreted and adapted to changing circumstances and new issues. In the modern era, the influences of Western colonialism generated efforts to codify it.

WORLD HISTORY

Development of the Sharia

Before Islam, the nomadic tribes inhabiting the Arabian peninsula worshiped idols. These tribes frequently fought with one another. Each tribe had its own customs governing marriage, hospitality, and revenge. Crimes against persons were answered with personal retribution or were sometimes resolved by an arbitrator. Muhammad introduced a new religion into this chaotic Arab world. Islam affirmed only one true God. It demanded that believers obey God's will and laws.

The Koran sets down basic standards of human conduct, but does not provide a detailed law code.

(Continued on next page)

Islamic Issues

One of the world's major religions, Islam is the faith of more than 600 million people. This *Bill of Rights in Action* examines some issues surrounding Islam. The first article traces the development of the Sharia, Islam's traditional law. The second article explores the troubled relationship between Islamic Iran and the United States—its history and its future. The third article examines the Salman Rushdie controversy and the concept of blasphemy in the modern world.

World History: The Origins of Islamic Law

U.S. Government: The U.S. and Iran: Time for a New Beginning?

Contemporary Issues: Blasphemy! Salman Rushdie and Freedom of Expression

This issue of the Bill of Rights in Action *is made possible by a generous grant from the W.M. Keck Foundation*

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Only a few verses deal with legal matters. During his lifetime, Muhammad helped clarify the law by interpreting provisions in the Koran and acting as a judge in legal cases. Thus, Islamic law, the Sharia, became an integral part of the Muslim religion.

Following Muhammad's death in A.D. 632, companions of Muhammad ruled Arabia for about 30 years. These political-religious rulers, called caliphs (KAY liff), continued to develop Islamic law with their own pronouncements and decisions. The first caliphs also conquered territories outside Arabia including Iraq, Syria, Palestine, Persia, and Egypt. As a result, elements of Jewish, Greek, Roman, Persian, and Christian church law also influenced the development of the Sharia.

Islamic law grew along with the expanding Muslim Empire. The Umayyad dynasty caliphs, who took control of the empire in 661, extended Islam into India, Northwest Africa, and Spain. The Umayyads appointed Islamic judges, *kadis*, to decide cases involving Muslims. (Non-Muslims kept their own legal system.) Knowledgeable about the Koran and the teachings of Muhammad, *kadis* decided cases in all areas of the law.

Following a period of revolts and civil war, the Umayyads were overthrown in 750 and replaced by the Abbasid dynasty. During the 500-year rule of the Abbasids, the Sharia reached its full development.

Under their absolute rule, the Abbasids transferred substantial areas of criminal law from the *kadis* to the government. The *kadis* continued to handle cases involving religious, family, property, and commercial law.

The Abbasids encouraged legal scholars to debate the Sharia vigorously. One group held that only the divinely inspired Koran and teachings of the Prophet Muhammad should make up the Sharia. A rival group, however, argued that the Sharia should also include the reasoned opinions of qualified legal scholars. Different legal systems began to develop in different provinces.

In an attempt to reconcile the rival groups, a brilliant legal scholar named Shafii systematized and developed what were called the "roots of the law." Shafii argued that in solving a legal question, the *kadi* or government judge should first consult the Koran. If the answer were not clear there, the judge should refer to the authentic sayings and decisions of Muhammad. If the answer continued to elude the judge, he should then look to the consensus of Muslim legal scholars on the matter. Still failing to find a solution, the judge could form his own answer by analogy from "the precedent nearest in resemblance and most appropriate" to the case at hand.

Shafii provoked controversy. He constantly criticized what he called "people of reason" and "people of tradition." While speaking in Egypt in 820, he was physically attacked by enraged opponents and died a few days later. Nevertheless, Shafii's approach was later widely adopted throughout the Islamic world.

By around the year 900, the classic Sharia had taken shape. Islamic specialists in the law assembled handbooks for judges to use in making their decisions.

The classic Sharia was not a code of laws, but a body of religious and legal scholarship that continued to develop for the next 1,000 years. The following sections illustrate some basic features of Islamic law as it was traditionally applied.

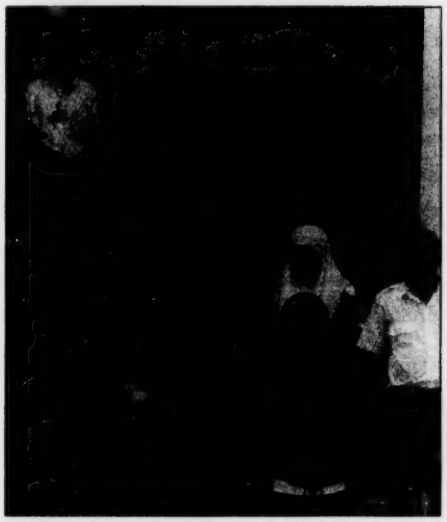
Family Law

Cases involving violations of some religious duties, lawsuits over property and business disputes, and family law all came before the *kadis*. Most of these cases would be considered civil law matters in Western courts today.

Family law always made up an important part of the Sharia. Below are some features of family law in the classic Sharia that would guide the *kadi* in making his decisions.

- Usually, an individual became an adult at puberty.
- A man could marry up to four wives at once.
- A wife could refuse to accompany her husband on journeys.
- The support of an abandoned infant was a public responsibility.
- A wife had the right to food, clothing, housing, and a marriage gift from her husband.
- When the owner of a female slave acknowledged her child as his own, the child became free. The child's mother became free when the owner died.
- In an inheritance, a brother took twice the amount as his sister. (The brother also had financial responsibility for his sister.)

- A husband could dissolve a marriage by repudiating his wife three times.
- A wife could return her dowry to her husband for a divorce. She could also get a decree from a *kadi* ending the marriage if her husband mistreated, deserted, or failed to support her.
- After a divorce, the mother usually had the right of custody of her young children.



Today, most Muslim countries ban polygamy. But Malaysia follows the traditional Islamic law that allows four wives. In July 1995, a husband was convicted and sentenced to six months in jail for having six wives too many. Here, his 10 wives (in dark dresses) leave court. (AP Photo/Bernama)

Criminal Law

The classic Sharia identified the most serious crimes as those mentioned in the Koran. These were considered sins against Allah and carried mandatory punishments. Some of these crimes and punishments were:

- adultery: death by stoning.
- highway robbery: execution; crucifixion; exile; imprisonment; or right hand and left foot cut off.
- theft: right hand cut off (second offense: left foot cut off; imprisonment for further offenses).
- slander: 80 lashes.
- drinking wine or any other intoxicant: 80 lashes.

Officials of the caliph carried out the penalties for these crimes.

Crimes against the person included murder and bodily injury. In these cases, the victim or his male next of kin had the "right of retaliation" where this was possible. This meant, for example, that the male next of kin of a murder victim could execute the murderer after his trial (usually by cutting off his head with a sword). If someone lost the sight of an eye in an attack, he could retaliate by putting a red-hot needle into the eye of his attacker who had been found guilty by the law. But a rule of exactitude required that a retaliator must give the same amount of damage he received. If, even by accident, he injured the person too much, he had broken the law and was subject to punishment. The rule of exactitude discouraged retaliation. Usually, the injured person or his kinsman would agree to accept money or something of value ("blood money") instead of retaliating.

In a third category of less serious offenses such as gambling and bribery, the judge used his discretion in deciding on a penalty. Punishments would often require the criminal to pay a reparation to the victim, receive a certain number of lashes, or be locked up.

Criminal Procedure

The victim of a criminal act or his kinsman ("the avenger of the blood") was personally responsible for presenting a claim against the accused criminal before the court. The case then went on much like a private lawsuit. No government prosecutor participated although certain officials brought some cases to court.

The classic Sharia provided for due process of law. This included notice of the claim made by the injured person, the right to remain silent, and a presumption of innocence in a fair and public trial before an impartial judge. There were no juries. Both parties in the case had the right to have a lawyer present, but the individual bringing the claim and the defendant usually presented their own cases.

At trial, the judge questioned the defendant about the claim made against him. If the defendant denied the claim, the judge then asked the accuser, who had the burden of proof, to present his evidence. Evidence almost always took the form of the direct testimony of two male witnesses of good character (four in adultery cases). Circumstantial evidence and documents were usually inadmissible. Female witnesses were not allowed except in cases where they held special knowledge, such as childbirth. In such cases, two female witnesses were needed for every male witness. After the accuser finished with his witnesses, the defendant could present his own.

If the accuser could not produce witnesses, he could demand that the defendant take an oath before Allah that he was innocent. "Your evidence or his oath," the Prophet Muhammad taught. If the defendant swore he was innocent, the judge dismissed the case. If he refused to take the oath, the accuser won. The defen-

(Continued on next page)

dant could also confess to a crime, but this could only be done orally in open court.

In all criminal cases, the evidence had to be "conclusive" before a judge could reach a guilty verdict. An appellate system allowed persons to appeal verdicts to higher government officials and to the ruler himself.

Islamic Law Today

In the 19th century, many Muslim countries came under the control or influence of Western colonial powers. As a result, Western-style laws, courts, and punishments began to appear within the Sharia. Some countries like Turkey totally abandoned the Sharia and adopted new law codes based on European systems. Most Muslim countries put the government in charge of prosecuting and punishing criminal acts. In the area of family law, many countries prohibited polygamy and divorce by the husband's repudiation of his wife.

Modern legislation along with Muslim legal scholars who are attempting to relate the will of Allah to the 20th century have reopened the door to interpreting the Sharia. This has happened even in highly traditional Saudi Arabia, where Islam began.

Since 1980, some countries with fundamentalist Islamic regimes like Iran have attempted to reverse the trend of westernization and return to the classic Sharia. But most Muslim legal scholars today believe that the Sharia can be adapted to modern conditions without abandoning the spirit of Islamic law or its religious foundations. Even in countries like Iran and Saudi Arabia, the Sharia is creatively adapted to new circumstances.

For Discussion and Writing

1. How did the Sharia develop differently than Western law systems like our own?

2. What differences do you see between the criminal law and court procedures of the classic Sharia and the criminal justice system in the United States today? What similarities are there?

3. Which features of the classic Sharia do you agree and disagree with the most? Why?

For Further Reading

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A C T I V I T Y

The Classic Sharia and Early Islamic Society

Laws can tell us much about a culture. They can inform us about the society's government, economy, geography, family relations, religious beliefs, technology, and much more.

Listed below are seven statements concerning the classic Sharia of the 10th century. Form small groups. Assign each group one of the statements. Members of each group should:

(1) Examine their assigned statement and any other material relating to it in the article.

(2) Write down as many facts about early Islamic society as they can infer from the statement.

(3) Report the facts they have discovered to the rest of the class in order to develop a picture of early Islamic society.

Statements From the Classic Sharia

1. A Muslim could be tried and punished for not performing his religious duties.
2. A woman counted as one-half a man if called as a witness in a trial.
3. When the owner of a female slave acknowledged her child as his own, the child became free. The mother became free when her owner died.
4. The most serious crimes in the Sharia included adultery, highway robbery, theft, and drinking alcohol.
5. Islamic criminal courts exercised due process of law.
6. If witnesses were not produced, the defendant could be asked to take an oath before Allah that he was innocent.
7. Punishments included death by sword and stoning, mutilation, lashes, retaliation, "blood money," reparation, and imprisonment.

The U.S. and Iran: Time for a New Beginning?

In 1953, the United States helped overthrow a popular Iranian prime minister. In 1979, Iranian revolutionaries ousted the American-supported government. During this Iranian Revolution, students invaded the U.S. embassy and took 52 Americans as hostages. Following the revolution, relations between the United States and Iran remained hostile. After years of bitterness between the two countries, is it time to restore diplomatic relations?

Iranian President Mohammed Khatami shakes hands with U.N. Secretary-General Kofi Annan, right. Speaking before the United Nations, Khatami stated that Iran wanted better relations with the United States. Currently, diplomatic relations are broken between the two countries after almost two decades of hostility. (AP Photo/Kathy Willens)

US GOVERNMENT

From about 1800 to the early 1900s, Great Britain and Russia controlled Iran. Russia, bordering Iran on the north, wanted access to the Persian Gulf. Britain saw Iran as a buffer protecting its colony India from the French and Russians. As new technology created a demand for petroleum, both Britain and Russia grew interested in Iran's vast oil reserves. In 1907, they divided Iran into two "spheres of influence," with each country dominating part of Iran. During World War I, Russian and British troops occupied Iran to protect their interests.

Following the war, Iran grew more independent. In 1921, Riza Khan Pahlavi, an Iranian army officer, overthrew the Iranian government. He established a military dictatorship and within four years took the throne as shah of Iran. He made efforts to modernize Iran and keep it free of foreign influence.

During World War II, the shah declared Iran neutral. Britain asked Iran's permission to use its railway to transport supplies to the Soviet Union. When the shah refused, Russian and British troops again occupied Iran. They made the shah step down and his son, Mohammed Riza Pahlavi, assumed the throne. The new shah supported the allied cause in the war.

After the war, British troops left. But Russian troops remained in northern Iran and helped set up two communist republics. Iran negotiated a treaty with Russia, agreeing to give Russia oil rights in exchange for Russia withdrawing its troops. When the troops left, the two republics crumbled and Iran retook control of the north. Iran's parliament then rejected the treaty granting Russia oil rights.

But a British oil company still controlled most of Iran's oil fields. In 1951, Iran's parliament, headed by Mohammed Musaddiq, voted for the government to take over ownership of Iran's oil fields. The British reacted by boycotting Iranian oil, which crippled Iran's oil industry.

The United States, which had paid little attention to Iran before World War II, attempted to mediate this dispute. Since entering a Cold War with the Soviet Union, the United States was trying to contain the Soviets. It took great interest in any country bordering the Soviet Union. Throughout the lengthy negotiations, the United States focused on making Iran politically strong enough to resist a communist takeover.

Eventually, the United States concluded that Shah Mohammed Riza Pahlavi was the only Iranian leader who could keep his country from falling into the grasp of the Soviets. The shah's main political oppo-

(Continued on next page)

nent was Mohammed Musaddiq, the popular reformer and Iran's prime minister. Musaddiq argued that Iran should take a neutral position in the Cold War between the United States and the Soviet Union.

Fearing that Musaddiq's policies would weaken Iran, President Eisenhower in 1953 authorized the Central Intelligence Agency (CIA) to intervene. Along with Britain and the shah, the CIA plotted to remove the prime minister. It arranged for mobs to surround Musaddiq's home, forcing him to flee and finally be arrested by the shah's allies.

After Musaddiq was driven from office, the shah strengthened his control over Iran. He interfered with parliamentary elections, failed to follow through with a plan to distribute land to poor farmers, censored the press, and took complete command of the Iranian military. The shah's secret police agency, SAVAK, imprisoned and tortured his political opponents.

The United States, however, viewed the shah as a strong ally in the Cold War with the Soviet Union. Consequently, the United States sent him weapons, aircraft, naval vessels, and other forms of military aid.

As the shah's rule became increasingly dictatorial, opposition grew against him and his ally, the United States. Islamic religious leaders such as the Ayatollah Ruhollah Khomeini spoke out against the shah and were arrested and forced into exile. Public demonstrations broke out in 1978, with the shah's army sometimes firing into the crowds, killing many.

In 1979 during the fourth week of the American hostage crisis, Iranians parade in front of the U.S. embassy where the hostages are held. One demonstrator holds a banner portraying America as a warmonger, while behind, another Iranian holds a portrait of the Ayatollah Khomeini. (AP Photo/Mohammad Sayad)

Widespread opposition forced the shah to flee Iran in January 1979. He ended up in the United States where he underwent surgery for cancer. But many Iranians believed that the United States was protecting the shah and plotting to restore him to power.

Crowds marched and gathered around the U.S. embassy in Tehran shouting "Death to the shah!" and "Death to America!"

Meanwhile, the Ayatollah Khomeini returned to Iran from exile and formed an Islamic revolutionary government. But no one was really in control. Chaos reigned. Street fighting took place in all the major cities. Roaming bands of revolutionaries, often college students, hunted SAVAK agents and other supporters of the shah's regime. Crowds marched and gathered around the U.S. embassy in Tehran shouting "Death to the shah!" and "Death to America!"

A power struggle was taking place between religious radicals and socialist radicals. On November 4, 1979, just days before a referendum of a new Iranian constitution, religious radical students broke into the embassy compound. They captured and took

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hostage 52 Americans. They paraded some, like embassy press officer Barry Rosen, blindfolded before TV cameras and accused them of being CIA agents. The students spat on and burned the American flag. They also captured many classified American documents.

Thus began the Iranian hostage crisis, which lasted 444 days. The students believed that their actions were justified. The United States had supported the shah and even helped overthrow Musaddiq in 1953. The students said that they would release the hostages if the United States returned the shah to Iran for trial. But even after the shah died of cancer, the Americans remained in captivity. Religious radicals were using the hostage crisis to gain popularity and keep socialist radicals from taking power.

President Carter applied economic pressure on the new regime in Iran. He canceled a military equipment shipment, placed an embargo on oil from Iran, and froze $12 billion in Iranian assets held in American banks. Carter also planned a mission to rescue the hostages. But this failed on April 24, 1980, when a dust storm caused U.S. military aircraft to collide in the Iranian desert. Prolonged negotiations between the two governments finally resulted in the release of all the hostages on January 20, 1981, the day of Ronald Reagan's inauguration as president.

"Rogue State"

Diplomatic relations between the United States and Iran remained severed following the hostages' release. Over the next two decades, the United States considered Iran a "rogue state," an outlaw among nations. On the other hand, Iran repeatedly called the United States the "Great Satan."

Iran attempted to disrupt other countries in the Middle East by exporting its brand of radical Islamic government. It also supported terrorist organizations striking against Israel and sponsored assassinations of Iranian dissenters living in foreign countries. In 1989, the Ayatollah Khomeini issued an edict calling for the killing of Salman Rushdie. A writer born in India and a citizen of Great Britain, Rushdie had written a novel that the Iranian government said insulted Islam.

Using revenues from its oil sales, Iran built up its military forces and even began a nuclear weapons program. The United States viewed this with alarm and urged its allies to ban arms sales to Iran. Iran, however, argued that it needed a strong military to defend itself. Iraq, a neighboring country, had invaded Iran in 1980, touching off a devastating war that lasted eight years.

During the 1990s, the United States continued to follow a hard-line foreign policy toward Iran. In 1995, President Clinton issued an executive order prohibiting American companies from trading with or making investments in Iran. The United States declared that Iran continued to support terrorist organizations and that it had stepped up its development of nuclear and other weapons of mass destruction.

Some foreign policy experts applauded the American hard-line policy. But others argued that a "new Iran," less fanatical and more eager for foreign investment, had emerged in recent years. Despite the absence of diplomatic relations, Iran began to welcome American exchange students, sports teams, and tourists. But many hotels in which they stayed still displayed old "Death to America" signs.

"The past can't be made to go away, and shouldn't . . . but a new beginning can be made."

A New Beginning?

In May 1997, Iran elected a moderate president. Years of economic suffering caused voters to reject the conservative religious leaders running the government. President Mohammed Khatami, himself an Islamic clergyman, immediately called for more freedom at home and a less hostile relationship with the United States.

In response to positive signals from Khatami, U.S. Secretary of State Madeleine Albright stated in June 1998 that the United States was not "anti-Islamic." She said she was prepared to join Iran in drawing "a road map leading to normal relations." But the Clinton administration cautioned that Iran must first change its behavior: It must renounce terrorism, end

(Continued on next page)

its development of weapons of mass destruction, and lift the death threat against novelist Salman Rushdie.

Iran responded by calling for the United States to release billions of dollars worth of Iranian assets frozen in American banks since the hostage crisis. The Khatami government further demanded that Americans stop blocking loans from the World Bank and withdraw their opposition to plans for an international oil pipeline across Iran.

To show its good intentions, the Khatami government announced in September 1998 that it was ending its support for the death edict on Salman Rushdie. It is unclear how far President Khatami can take Iran in normalizing relations with the United States. He still faces strong opposition from the conservative Islamic clergy, who continue to view America as the "Great Satan."

Barry Rosen, one of the 52 hostages captured in 1979, recently met with a former revolutionary student leader who helped plan the U.S. embassy takeover. "The past can't be made to go away, and shouldn't," Rosen said, "but a new beginning can be made."

For Discussion and Writing

1. Why did many Iranians have a bitter hatred of the United States at the time of the revolution in 1979?
2. Why has the United States accused Iran of being a "rogue state"?
3. What is your opinion of Barry Rosen's statement quoted at the end of the article?

For Further Reading

MacLeod, Scott. "Old Iran. . . vs. New." *Time*. 6 July 1998:72-74.

Wells, Tom. *444 Days, The Hostages Remember*. San Diego: Harcourt Brace, 1985.

ACTIVITY

Task Force on Iran

Below are several U.S. foreign policy options regarding Iran. Form small groups that will assume the role of a task force to advise the president and Congress on the future of U.S.–Iran relations. Each task force should discuss the pros and cons of each option and then write a position paper recommending one of them or its own proposal. The position paper should also include reasons for the recommendation as well as why the other options were rejected. Each task force should then present its recommendation and reasoning to the rest of the class.

A. The United States should immediately and unilaterally offer to restore full diplomatic relations with Iran.

B. The United States should not offer to restore diplomatic relations just yet, but should agree to one or more of Iran's demands. (These include withdrawing opposition to the construction of an international oil pipeline across Iran, ending U.S. trade and investment restrictions, and unfreezing Iranian assets in American banks.)

C. The United States should continue to pressure Iran to renounce terrorism, end its development of weapons of mass destruction, and behave according to the standards of the world community before offering to restore diplomatic relations.

D. The United States should offer to restore diplomatic relations only if Iran apologizes for taking the American embassy personnel hostage in 1979.

The task force may create its own option to recommend, which might combine some of the ideas made above.

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Blasphemy! Salman Rushdie and Freedom of Expression

Novelist Salman Rushie's book *The Satanic Verses* angered many Muslims. They accused Rushdie of blasphemy—insulting their sacred religion. The government of Iran offered a reward to anyone who killed Rushdie. Many people in Western nations viewed Iran's action as an assault on freedom of expression. They see blasphemy as an outdated notion. But the crime of blasphemy still exists in some Western nations. In the United States, prosecutions for blasphemy, though always rare, did not officially end until the early 1970s.

Author Salman Rushdie holds up a copy of his controversial book, The Satanic Verses, *during a rare news conference held in 1992 in Arlington, Va. (AP Photo/Ron Edmonds)*

CONTEMPORARY ISSUES

Blasphemy refers to the act of offending deeply held religious beliefs. Perhaps the earliest prohibition against blasphemy appeared in the Ten Commandments, which declared, "You shall not revile God." In the Jewish tradition, this meant that no one could verbally abuse God or publicly reject belief in him. The Old Testament called for death by stoning for those guilty of blasphemy. After Christianity prevailed over most of Europe in the Middle Ages, the Roman Catholic Church punished blasphemers by flogging, excommunication, and burning at the stake.

In 1534, King Henry VIII broke with the Catholic Church and established his own Church of England. It became the official church in England and later in some American colonies, such as Virginia. Under English common law, blasphemy was a crime, but only with reference to Christianity. This common law prohibition against Christian blasphemy has continued to the present day in the United Kingdom.

In 1988, when Salman Rushdie first published *The Satanic Verses* in the United Kingdom, many Muslims living in that country accused the author of blasphemy against Islam. But English law did not recognize this as a crime. So religious leaders in Iran decided to take matters into their own hands.

The Rushdie Affair

Ahmed Salman Rushdie was born in Bombay, India, of Muslim parents. But he was educated mainly in England. After earning a degree in history from Cambridge University, Rushdie briefly worked as an actor and advertising copywriter in London. He published his first novel in 1975. A naturalized British citizen, Rushdie chose to write his novels in English rather than in his native Urdu, a language widely used by Muslims in India. At the time that he wrote *The Satanic Verses*, Rushdie was not a practicing Muslim.

The Satanic Verses is a fantasy about two actors from India traveling on an airplane. After a terrorist bomb blows up the airplane, they fall to Earth but survive. The controversial parts of the book center on two chapters.

One of the Indian actors apparently is losing his mind. He dreams about God revealing his will to the Prophet Muhammad, who passes on the sacred words to humanity through the Koran, the holy book of Islam. But the novel refers to Muhammad by an insulting name used by Christians in the Middle Ages. As part of the dream sequence, a scribe called "Salman" writes down God's

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commands that are coming from the lips of Muhammad. The scribe, however, decides to play a trick by changing some of the divine words. Since Muslims hold the Koran as the revealed word of God, they deplored Rushdie for ridiculing it.

The title of the book refers to an old legend retold by Rushdie. According to the legend, some of the Koran's original verses originated with Satan, and Muhammad later deleted them. By repeating this legend, Rushdie offended Muslims by associating the holy Koran with the work of Satan.

One part of the novel probably outraged Muslims the most. It describes people mocking and imitating Muhammad's 12 wives. Muslims revere Muhammad's wives as the "mothers of all believers."

Students and teachers in Tehran, Iran, protest the publishing of Salman Rushdie's book The Satanic Verses. *Protesters carry banners with Rushdie's picture crossed out and captioned "sentenced to death." (AP/Wide World Photo)*

Most Muslims reacted with shock and anger at these passages from *The Satanic Verses*. They felt that they had been betrayed by one of their own. Rushdie had been born a Muslim. Muslims accused Rushdie of turning his back on his roots to embrace Western culture. In the minds of many, *The Satanic Verses* symbolized the hostility of the West against the Islamic world.

A month after its publication, India banned the book. Bannings soon followed in Pakistan, South Africa, Saudi Arabia, and other countries with large Muslim populations. Anti-Rushdie demonstrations and book burnings took place in Britain.

Rushdie attempted to defend himself. He pointed out that his book was, after all, a work of fiction and that the part of the book that offended Muslims consisted of one character's deranged dreams. But this did not silence his critics. They demanded that the British government ban the book as blasphemous. The government refused on the grounds that English law protected only the Christian religion from acts of blasphemy.

On February 14, 1989, the day before Rushdie's book was to be published in the United States, the spiritual and political leader of Iran, the Ayatollah Khomeini, issued a *fatwa* against Rushdie. In Islamic law, a *fatwa* is a declaration issued by a legal authority. Khomeini's *fatwa* shocked the world:

> I would like to inform all the intrepid Muslims in the world. . . that the author of the book titled *The Satanic Verses*, which has been compiled, printed, and published in opposition to Islam, the Prophet, and the Koran, as well as those publishers who were aware of its contents, have been declared *madhur el dam* ["those whose blood must be shed"]. I call on all zealous Muslims to execute them quickly, wherever they find them, so that no one will dare to insult Islam again. . . .

In addition to the *fatwa*, Iran also offered a bounty of several million dollars for the assassination of Rushdie.

Khomeini's *fatwa* offended many Islamic religious leaders. They condemned it as violating Islamic teachings of mercy. Sheik Muhammad Hossam el Din of Cairo's Al Azhar Mosque said that it made "Islam seem brutal and bloodthirsty." He argued that the book should simply be banned and the author given a chance to repent.

Rushdie went into hiding, protected by the British police. He issued a statement expressing his regret for the distress that his book may have caused Muslims. A little over a year later, Rushdie announced that he had returned to Islam. He went on to renounce any-

thing in his novel that insulted Islam, the Prophet Muhammad, or the Koran. But Iranian leaders refused to cancel the *fatwa*.

In 1991, the Japanese translator of *The Satanic Verses* was stabbed to death. Shortly afterward, the Italian translator was also stabbed, but survived. In 1993, the Norwegian publisher of the book was injured in a gun attack. Investigators suspect that all these incidents were tied to the Iranian *fatwa*.

In a 1997 interview, Rushdie expressed his feelings about the whole affair:

> In my view, the best one can do is to show, by writing books, by continuing, that it didn't work. That even this colossal threat did not work. *The Satanic Verses* was not suppressed, the author of *The Satanic Verses* went on writing. Life goes on.

Finally, in September 1998, Iran's recently elected moderate government announced that it no longer had any intention of threatening the life of Salman Rushdie or of encouraging others tc do so. But the government lacked the authority to repeal the religious *fatwa* of the Ayatollah Khomeini, who died in 1989.

Blasphemy in America

The idea of punishing someone for blasphemy disturbs most Americans today. It runs counter to freedom of religion and freedom of expression, both guaranteed in the First Amendment to the U.S. Constitution. Most Americans believe people should have the right to believe or disbelieve in any religion and should have the right to express their beliefs or disbeliefs.

But prosecutions for blasphemy are not unknown in America history. Both the Virginia and Massachusetts Bay colonies passed laws providing the death penalty for blasphemy. But the few cases prosecuted rarely resulted in more than whipping or banishment. Even these cases had more to do with religious and political dissent than with blasphemy.

Probably the most noteworthy case during the colonial period occurred in 1643 at Plymouth, then part of the Massachusetts Bay Colony. It involved Samuel Gorton, an eccentric "Professor of the Mysteries of Christ." When Gorton denounced "hireling ministers" as doing the work of the devil, he was accused of making blasphemous speeches. Banished, he ended up in Rhode Island where he wrote a long insulting letter to the governor of Massachusetts Bay, John Winthrop. Winthrop sent soldiers to arrest and bring Gorton to Boston where the colonial legislature tried and convicted him of "capital blasphemy." Sentenced to hard labor, he caused so much trouble for his jailers that the authorities again banished him from the colony.

The only individuals actually executed for blasphemy in the American colonies were four Quakers. The government of Massachusetts had banished them for attacking the Puritan church. When they violated their banishment and returned to the colony, they were all hanged in 1659–60.

Following the ratification of the Constitution in 1788, the First Amendment and most state constitutions prohibited the establishment of an official religion. Nevertheless, states still occasionally prosecuted persons for blasphemy against Christianity.

In a typical 19th-century blasphemy case, a man called Ruggles made highly insulting remarks about Jesus Christ and his mother, Mary. The state of New York tried and convicted Ruggles and sentenced him to jail for three months plus a $500 fine. Appealing his case, Ruggles' attorney argued that his client could not be prosecuted for blasphemy since there was no state law against it.

In 1811, New York's highest appeals court unanimously rejected Ruggles' arguments. The court said that New York did not need a blasphemy statute. Ruggles' words violated the common law inherited from England, which made blasphemy against Christianity the law of the land. Based on this interpretation of the law, the New York court stated that reviling Jesus was a crime since it "tends to corrupt the morals of the people, and to destroy good order."

The court seemingly ignored that New York's state constitution prohibited the establishment of any government-sponsored religion. Nevertheless, most other states adopted this legal opinion. Although very few persons were prosecuted, blasphemy remained a crime in several states well into the 20th century.

The U.S. Supreme Court has never decided a blasphemy case, but in 1952 it ruled on a similar matter. In this case, the New York State Film Censorship Board banned the film *The Miracle*, which told of a girl who believed she was the Virgin Mary about to give birth

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to Jesus. The state court ruled that the film was "sacrilegious" since it treated Christianity with "contempt, mockery, scorn, and ridicule." The Supreme Court, however, unanimously decided that sacrilege could not be used as a basis for film censorship. "It is not the business of government in our nation," wrote Justice Tom Clark, "to suppress real or imagined attacks upon particular religious doctrine." *[Burstyn v. Wilson*, 342 U.S. 495 (1952)]

Gradually, state courts found blasphemy laws and prosecutions unconstitutional or unenforceable. No prosecutions for blasphemy have taken place in the United States since 1971.

For Discussion and Writing

1. What is blasphemy?
2. Why do you think the Islamic world reacted so strongly against Salman Rushdie and his book?
3. Do you agree or disagree with the opinion of Justice Tom Clark in *Burstyn v. Wilson*? Why?

For Further Reading

Levy, Leonard. *Blasphemy*. New York: Alfred A. Knopf, 1993.

Smith, William. "Hunted by an Angry Faith." *Time*. 27 Feb. 1989:28+.

ACTIVITY

Blasphemy vs. Freedom of Expression

Imagine that you are advisors to a U.S. senator. The following constitutional amendment has been proposed:

The First Amendment shall not be interpreted to protect blasphemous speech. States shall be free to enact anti-blasphemy laws as long as they prohibit offensive speech against all religions.

The senator has asked you to evaluate this proposed amendment.

1. Form small groups. Each group will role play advisors to a U.S. senator.
2. Each group should analyze the proposed amendment by answering these questions:
   a. What is the goal of the amendment?
   b. What are the amendment's advantages? (What are its benefits? Will it achieve its goal? Will it achieve the goal efficiently? Is it inexpensive? Does it protect people from harm? Does it ensure their liberties?)
   c. What are the amendment's disadvantages? (What are its costs? Is it inefficient? Does it cause harm? Does it intrude on people's liberties? Does it have any potential negative consequences?)
   d. Weighing the amendment's advantages and disadvantages, do you recommend that the senator support or oppose it? Why?

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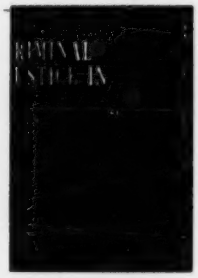

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The
BILL OF RIGHTS IN ACTION

CONSTITUTIONAL RIGHTS FOUNDATION SPRING 1999 VOLUME 15 NUMBER 2

The Code Napoleon

Napoleon Bonaparte created the first modern code of laws. The Code Napoleon unified French law and became the model for legal systems in most other nations in the world.

Napoleon rose to prominence during the French Revolution. As a military officer, he drove the British from Toulon in southern France. Promoted to general, he crushed an attempt to restore the monarchy and led the French army to victories in Italy and Egypt.

A military hero to the French people, he seized control of the French government in 1799 with two allies. He immediately ordered the drafting of a new constitution. This document guaranteed that all adult males could vote, but it did not provide any bill of rights. "What the French people want," said Napoleon, "is equality, not liberty." The Constitution of 1799 also created a complicated form of government called the Consulate. But Napoleon, as "First Consul," held most of the power. Tired of revolutionary chaos and war, the French people overwhelmingly voted to approve the new constitution, which promised stability if not freedom.

Napoleon rapidly rose from army officer to general to leader of France. His most lasting contribution was his Code Napoleon, the first modern code of laws. (Corbis/Austrian Archives)

Napoleon quickly set to work taking control of the country by appointing cabinet ministers, provincial governors and councils, police commissioners, mayors, and judges—all loyal to him. To his credit, Napoleon selected appointees who generally proved to be efficient and honest.

Napoleon also established France's first public education system and financed many public-works projects including the beautification of Paris. To end a violent conflict with the Roman Catholic Church brought on by the revolution, Napoleon negotiated a pact with the pope. The church turned its lands over to the state. In return, the government paid the salaries of Catholic priests (France was mostly a Catholic country).

In 1800, Napoleon led his army over the Alps to defeat the Austrians in Italy. A few months later, he reached agreement with Spain to return Louisiana to France. In 1802, a vote of the people made him "First Consul for Life." That same year, he signed peace treaties with several countries. The short period of peace that followed allowed Napoleon to complete his plans for unifying the French nation. This included writing a new code of laws to apply equally to all French citizens regardless of class.

(Continued on next page)

WORLD HISTORY

Codes

As defined in *Webster's New World Dictionary*, a code is a body of laws arranged systematically. This *Bill of Rights in Action* examines three different codes: the Code Napoleon, the most influential code of modern times; Southern Black Codes, the infamous laws Southern states attempted to adopt following the Civil War; and the emerging international law against the death penalty, which conflicts directly with much U.S. state and federal law.

World History: The Code Napoleon

U.S. Government: The Death Penalty and Human Rights: Is the U.S Out of Step?

U.S. History: The Southern "Black Codes" of 1865-66

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The Civil Code

By Napoleon's time, a confusion of customary, feudal, royal, revolutionary, church, and Roman laws existed in France. Different legal systems controlled different parts of the country. The French writer Voltaire once complained that a man traveling across France would have to change laws as often as he changed horses.

Determined to unify France into a strong modern nation, Napoleon pushed for a single set of written laws that applied to everyone. He appointed a commission to prepare a code of laws. Napoleon wanted this code to be clear, logical, and easily understood by all citizens. The commission, composed of Napoleon and legal experts from all parts of France, met over a period of several years. Enacted on March 21, 1804, the resulting Civil Code of France marked the first major revision and reorganization of laws since the Roman era. The Civil Code (renamed the Code Napoleon in 1807) addressed mainly matters relating to property and families. But these areas of law greatly affected people's lives.

The French writer Voltaire once complained that a man traveling across France would have to change laws as often as he changed horses.

The Civil Code writers tried to achieve a compromise between the past and the revolution. The Civil Code eliminated feudal and royal privileges in favor of all citizens' equality before the law. It included some rights such as freedom of speech and worship along with public trial by jury. It allowed individuals to choose their own occupation. But it banned worker organizations, and the employer's word was to be taken over that of his employee.

Most of the 2,281 articles in the Civil Code dealt with the right of property. This was defined as "the right to enjoy and to dispose of one's property in the most absolute fashion." Since the Industrial Revolution had not yet taken hold in France, property mainly referred to land. Although the right to landed property was considered "absolute," some limitations applied. For example, only the legitimate children of a landowner could inherit his land. Furthermore, the landowner's children had to share equally in the inheritance. The Civil Code also adopted the old feudal law that a wife could not inherit her dead husband's land because the "blood family" would then no longer own it.

The Civil Code retained the revolution's law that a civil authority must conduct marriages. (It did not recognize church marriages as legal.) It based many other family laws on traditional and even ancient Roman law. The father ruled his children. A father could veto his son's marriage until age 26 and that of his daughter until 21. Fathers even had the right to imprison their children at will.

Like other legal systems of the time, the Civil Code made the wife legally inferior to her husband: "The husband owes protection to his wife, and the wife owes obedience to her husband." Without her husband's permission, a wife could not conduct any business. Moreover, she could not make contracts. The Civil Code did provide for the idea of community property. This means that a married couple jointly owns all the wealth they accumulate during their marriage, and in case of divorce, they must divide it equally. But the code limited this progressive (although very old) idea. The husband alone legally controlled all family assets during the marriage, including any property his wife possessed before getting married.

The Civil Code permitted divorce on the grounds of adultery, cruelty, criminal conviction, or the mutual agreement of the spouses and their parents. The revolution had introduced divorce for the first time into France, and the Catholic Church bitterly opposed it. The law of divorce favored the husband. He could get a divorce if his wife committed one act of adultery anywhere. A wife, however, could secure a divorce on grounds of adultery only if her husband committed the act within the family home.

Between 1806 and 1810, Napoleon added a Code of Civil Procedure, Commercial Code, Code of Criminal Procedure, and Penal Code to the ground-breaking Civil Code of 1804. Although they covered a lot, the laws themselves did not go into great detail. Under Napoleon's system, courts must sometimes use reason and logic to interpret how laws apply to certain cases. But the courts' decisions generally do not apply to

future cases. This is quite unlike common-law systems. In common-law countries like Britain and the United States, court decisions can become precedents with the force of law. In France, the codes that lawmaking bodies enact are supreme. When the codes need amending, the legislature periodically updates them. For example, the French Parliament established legal equality between husband and wife in the Code Napoleon following World War II.

The Legacy

Napoleon made his Civil Code the law in territories he conquered, such as parts of Italy and Holland. After his death, the Code Napoleon inspired many other nations to adopt similar law codes.

The Code Napoleon has even influenced the United States, a country steeped in the traditions of common law. In 1808, soon after President Thomas Jefferson purchased Louisiana from Napoleon, American lawmakers in the new territory wrote a code of laws largely taken from Napoleon's Civil Code. This territorial code remains as the foundation of Louisiana state law today.

The code's influence is not limited to Louisiana. Legislators patterned the New York state civil and criminal codes, first completed in 1850, on the Code Napoleon. These codes served as models for similar codes in other states and in the federal government. The old common law was codified, placed in codes.

After defeating Napoleon at Waterloo in 1815, the British imprisoned him on a remote island. Thinking about his career as a general and leader of France, Napoleon remarked: "My real glory is not the 40 battles I won—for my defeat at Waterloo will destroy the memory of those victories. . . . What nothing will destroy, what will live forever, is my Civil Code." Now approaching its 200th anniversary, the Code Napoleon continues to influence the lives of ordinary people in nearly all parts of the world. Napoleon was right. His most lasting legacy did not turn out to be his military conquests, but rather his foresight in realizing the unifying effect of a code of laws applying to all.

This allegorical painting depicts the heroic status of Napoleon. (Corbis/Gianni Dagli Orti)

For Discussion and Writing

1. Why did Napoleon believe a new code of laws was necessary for France?
2. What features of the Code Napoleon do you agree with the most? What features do you agree with the least? Why?
3. What are some important differences between code-law and common-law systems?

For Further Reading

Durant, Will and Ariel. *The Age of Napoleon.* New York: Simon and Schuster, 1975.

Schwartz, Bernard, ed. *The Code Napoleon and the Common-Law World.* New York: Washington Square, 1956.

(Continued on next page)

ACTIVITY

Advising Napoleon

In this activity, groups will role play advisers to Napoleon, recommending final changes in the Code Napoleon.

1. Divide the class into five groups, assigning each group one of the five provisions below.
2. Each group should (a) discuss its provision, answering the Questions below and (b) prepare to report the answers back to the class.
3. When the groups have prepared their answers, each group should report back and the class should discuss the recommendations.
4. After all the groups have reported, the teacher (as Napoleon) decides what changes, if any, should be made in the provisions.
5. Hold a class discussion on whether this process, with one person making the final decision, is the best way to make laws.

Questions

1. What are the advantages in keeping this Code provision as written?
2. What are the disadvantages?
3. What changes might be made in this provision?
4. Should these changes be made? Why or why not?

Code Provisions

Provision #1: A father can veto his son's marriage until age 26 and that of his daughter until age 21.

Provision #2: There can be no worker organizations (unions).

Provision #3: A married couple jointly owns all the wealth the two accumulate during their marriage, and in case of divorce, they must divide it equally.

Provision #4: Divorce is allowed on the grounds of adultery, cruelty, criminal conviction, or the mutual agreement of the spouses and their parents.

Provision #5: The husband alone controls all property during the marriage, including any property his wife possessed before getting married.

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The Death Penalty and Human Rights: Is the U.S out of Step?

An overwhelming majority of Americans support the death penalty. The rest of the world, however, is slowly abandoning this ancient and ultimate punishment. Many countries have signed international agreements limiting and outlawing it.

Italian demonstrators protest the U.S. execution of Joseph Cannon. Cannon at age 17 murdered a woman. Texas authorities executed him for this crime in 1998. (AP Photo/Massimo Sambucetti)

Under our federal system of government, every state, and the federal government, has its own set of criminal laws. This means that Congress and each state legislature must determine whether to enact capital punishment in its jurisdiction. Today, 38 states and the federal government have death-penalty laws. These laws apply only to first-degree murders, those done with deliberation and calculation. Only 12 states do not have capital punishment (Alaska, Hawaii, Iowa, Maine, Massachusetts, Michigan, Minnesota, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin).

Current trends in the United States show strong support for capital punishment. In the last 20 years, support for the death penalty has never dropped below 57 percent in opinion polls. In a few polls, it has reached as high as 80 percent. During the 1990s, two states (New York and Kansas) decided to reinstate the death penalty, while no state abolished it. The death penalty has broad popular support.

US GOVERNMENT

Any death-penalty law and case must meet constitutional standards. The Eighth Amendment to the U.S. Constitution forbids "cruel and unusual punishments." The Fifth and 14th amendments require "due process of law." The 14th Amendment also promises "equal protection of the laws." The Sixth Amendment guarantees every defendant a fair trial. Any defendant can appeal a death sentence on these or other grounds. Appeals courts scrutinize death-penalty cases to make sure proper procedures and constitutional standards have been followed.

The highest appeals court is the U.S. Supreme Court. This court has the final say on matters of U.S. constitutional law. It has made several landmark rulings on death-penalty cases.

After rejecting other death-penalty laws as unconstitutional, the Supreme Court in 1976 in *Gregg v. Georgia* upheld one type of death-penalty law. This type requires a separate penalty trial after a guilty verdict. In the penalty trial, jurors consider mitigating factors that tend to excuse the behavior and aggravating factors that make the crime seem worse. A court can impose a death sentence only if the aggravating factors outweigh the mitigating factors. This means that only the most depraved murderers can be punished by death.

The Supreme Court also considered challenges to the death penalty based on racial bias. One study presented to the court showed that in Georgia blacks who killed whites were sentenced to death seven times more often than whites who killed blacks. In 1987 in *McCleskey v. Kemp*, the Supreme Court ruled by a 5–4 vote that a mere statistical variation was not enough to invalidate the death penalty. To do that, the defendant would have to show that the state had somehow encouraged the result or that there was actual racial discrimination in a particular case. Since the defendant had offered no such proof, the court upheld the death penalty.

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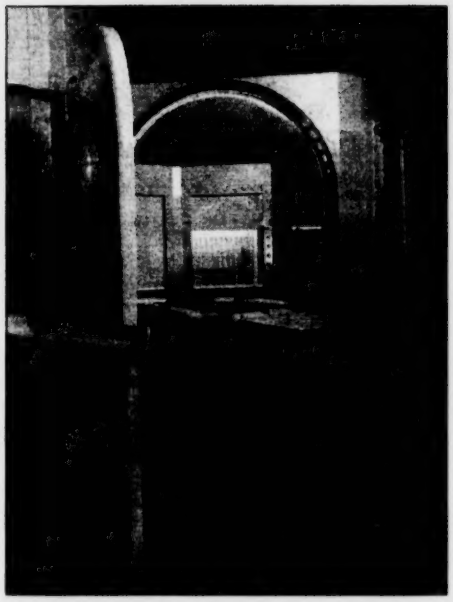
In cases following *McCleskey*, the Supreme Court limited some death-penalty appeals. Opponents of capital punishment attacked these decisions, saying a shortened appeals process will make it more likely that an innocent person will be put to death. According to the Death Penalty Information Center, nearly 70 prisoners have been released from death rows since 1973 because DNA or other evidence proved that they were innocent. Supporters of capital punishment say that many prisoners have abused the appeals process, filing frivolous appeals simply to delay their execution. They point out that the appeals process averaged about 20 years. Even with the court limiting some appeals, they say the process is the most extensive and careful in the world, still lasting many years and costing millions of dollars. This process, they say, will ensure that no innocent person is executed.



California's San Quentin Prison has converted its gas chamber to a lethal-injection room. The windows on the far wall allow witnesses to view executions. (AP Photo/California Dept. of Corrections)

Today, the death penalty seems firmly entrenched in the United States. In the last 20 years, about 400 prisoners have been executed. In 1997, 74 executions took place. About 3,300 prisoners are currently on death rows, waiting out their appeals.

Current trends in the United States show strong support for capital punishment.

But new challenges against the death penalty are arising. This time from the international community. Many nations are urging the United States to sign treaties against capital punishment. If the U.S. government signed any treaty banning capital punishment, it would bind every state. Article VI of the U.S. Constitution says that all ratified treaties "shall be the supreme Law of the Land; and the judges in every state shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary Notwithstanding."

Supporters of the death penalty strongly oppose any treaty that forbids capital punishment. They view this penalty as a fitting one for murder and a sensible response to the still-high (though declining) murder rate in the United States. They see these treaties as threats to the democratic right of any state to impose capital punishment.

International Trend Against Capital Punishment

This strong support of the death penalty contrasts with international trends. The use of the death penalty is declining around the world. In 1981, 27 countries banned the death penalty. By 1998, this number had risen to 63. More than 40 other nations have severely restricted capital punishment: They either limit it to wartime crimes or have not used it for 10 years or more. The United States and 90 other countries currently still use the ultimate punishment.

In 1997, governments in 40 countries executed slightly more than 2,000 prisoners, according to Amnesty International, an international human rights organization. More than 80 percent of these executions took place in only four countries: 1,644 in China, 143 in Iran, 122 in Saudi Arabia, and 74 in the United States. It is believed that Iraq executed hundreds of political prisoners, but these are unconfirmed. Also, worldwide in 1997, courts sentenced almost 4,000 persons to death.

In May 1998, the British House of Commons voted to adopt the European Convention for the Protection of Human Rights and Fundamental Freedoms. Along with other things, this human rights declaration requires those who sign it to abolish the death penalty for all civilian crimes. Among the major European nations today, only Russia refuses to abolish its death penalty, mainly because of a severe crime problem that began after the breakup of the Soviet Union.

Regional and international declarations against the death penalty obligate nations who agree to them. Thirty-two nations have signed and ratified one of these documents—the International Covenant on

Civil and Political Rights. The covenant protects fundamental rights and specifically forbids the death penalty for juvenile offenders. In 1992, the U.S. Senate ratified this covenant, but only after reserving the right to execute juvenile offenders.

In 1998, the U.N. Commission on Human Rights voted for capital punishment nations to suspend criminal executions as a first step in completely ending them. Although not legally binding, this call for the suspension of the death penalty reflected the view of most major nations in the world.

Criticism of the U.S.

The United States has long championed human rights. But in 1998, the U.N. Commission on Human Rights issued a stinging report. It criticized the United States for its recent increase in death sentences and executions. It especially condemned the execution of women, mentally impaired persons, and juvenile offenders. The report denounced the United States for signing the International Covenant on Civil and Political Rights and reserving the right to execute juvenile offenders. This reservation, it stated, violated the purpose of the treaty. Also, according to the report, capital punishment in the United States is applied unfairly to disproportionate numbers of minorities and the poor who often fail to receive adequate legal representation.

U.S. officials quickly called the U.N. report inaccurate and unfair because it "fails to recognize properly our extensive safeguards and strict adherence to due process." They argued that the Commission on Human Rights should spend more of its efforts investigating countries like China, which commonly violates basic due process of law and gives those sentenced to death little, if any, time to appeal.

Juveniles and the Death Penalty

The U.N. Convention on the Rights of the Child bars both capital punishment and life imprisonment without the possibility of release for crimes committed by juveniles under 18 years of age. Today, only six countries in the world carry out such sentences: Iran, Nigeria, Pakistan, Saudi Arabia, the United States, and Yemen.

In 1988 in *Thompson v. Oklahoma,* the U.S. Supreme Court stopped the execution of an offender who had committed a murder at age 15. The opinion of the court stated that it was unconstitutional to execute offenders for crimes committed when they were younger than 16. It declared that the death penalty "would offend civilized standards of decency" and thus would violate the Eighth Amendment's prohibition against "cruel and unusual punishments." The court reasoned that juveniles under 16 generally lacked the experience, education, and intelligence to fully comprehend the consequences of their deadly acts. It said that they were more susceptible to impulse and peer influence than adults. Although five justices voted to stop the execution, only four justices agreed with the opinion of the court. This made *Thompson* a "plurality opinion," which holds less weight than an opinion joined by five or more justices.

Among the major European nations today, only Russia refuses to abolish its death penalty. . .

The next year, the Supreme Court considered whether 16- and 17-year-olds could be executed. In two cases (*Stanford v. Kentucky* and *Wilkins v. Missouri*), the court voted 5–4 to uphold these executions. The court stated two tests for an unconstitutional punishment: Either the punishment had to have been considered "cruel and unusual" in 1789 when the Constitution was adopted, or it must violate the "evolving standards of decency that mark the progress of a maturing society." The court concluded that executing 16- and 17-year-olds did not meet either test. The common law in 1789 treated 15-year-olds as adults. As for modern standards, the court looked to state law and federal laws. At that time, only 15 states rejected capital punishment for 16-year-olds and just 12 barred it for 17-year-olds. Seeing no national consensus against the death penalty, the court upheld it.

Half the states currently allow capital punishment for murderers who kill at age 16 or 17. Since 1985, nine juvenile offenders have been executed in the United States. This amounts to more than half of these executions worldwide. Although all nine were 17-years-old at the time of their offenses, they were well into adulthood by the time they were executed.

The case of Joseph Cannon is typical. At age 17, Cannon murdered Ann Walsh. At the sentencing hearing, his lawyer pointed out that the teenager had suffered severe head injuries after being hit by a car at

(Continued on next page)

age 4. Starting at age 7, he was frequently beaten and sexually abused by his stepfather. At 15, he was diagnosed as psychotic after attempting suicide. The prosecutor stressed the brutality of the crime. A single mother of eight, Walsh had taken in the homeless teenager. When she returned home one day, Cannon tried to rape her and shot her six times. The court found the aggravating factors outweighed the mitigating factors and sentenced him to die. Cannon remained on death row in a Texas prison for 21 years while appealing his case in state and federal courts.

Capital punishment for those like Joseph Cannon who commit horrible crimes as juveniles provokes strong opposing opinions. Miriam Shehane, president of Victims of Crime and Leniency, argues, "If someone does an adult crime, they are acting as adults, and they have to take responsibility." On the other side of the debate, the National Coalition to Abolish the Death Penalty contends, "When we as a society sentence a child to death . . . we surrender to the misguided notion that some children are beyond redemption."

In a 1998 interview on the eve of his execution, Joseph Cannon, then 38, said, "Yes, I was dangerous when I was a kid. I am ashamed the way I'm going to die. I'm gonna be hated."

For Discussion and Writing

1. Do you think that Joseph Cannon should have been spared execution? Why or why not?
2. Why do you think the United States, almost alone among the major nations of the world, still uses capital punishment?
3. The appeals process in death-penalty cases sometimes takes 20 years in the United States. China sometimes executes prisoners the day after they are sentenced. Which system comes closest to your view of how death-penalty appeals should be handled? Why?

For Further Reading

The Death Penalty Worldwide: Developments in 1997. London: Amnesty International, April 1998.

Farley, Christopher John and Willwerth, James. "Dead Teen Walking." *Time*. 19 Jan. 1998:50-56.

ACTIVITY

U.N. Convention on the Rights of the Child

The United States has signed, but the U.S. Senate has yet to ratify, the U.N. Convention on the Rights of the Child, which contains this language:

Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offenses committed by persons below eighteen years of age. . . .

In this simulation, proponents and opponents will appear before a hearing of the Senate Foreign Relations Committee to argue for and against ratification of the convention. The committee will then vote whether to recommend ratification by the full Senate. If ratified, the convention would become the law throughout the United States.

Divide the class into the five role groups listed below. Each group should use the article and other sources to prepare for its role in the simulated Senate Foreign Relations Committee hearing.

U.N. Commission on Human Rights: The Convention should be ratified, thus enabling the United States to comply with international law, which condemns sentencing juveniles to death or to life in prison without possibility of release.

State of Texas: The convention should not be ratified since each state and its people should democratically decide whether or not to have capital punishment.

National Coalition to Abolish the Death Penalty: The convention should be ratified since juvenile offenders are not as responsible as adults for their criminal acts.

Victims of Crimes and Leniency: The convention should not be ratified because some juvenile offenders are so dangerous and lacking in remorse that they should be treated as adults.

Senate Foreign Relations Committee: Members should prepare questions to ask the groups appearing before them. Then they will vote for or against recommending ratification of the convention to the full Senate. Finally, each member should explain his or her vote.

The Southern "Black Codes" of 1865-66

The end of the Civil War marked the end of slavery for 4 million black Southerners. But the war also left them landless and with little money to support themselves. White Southerners, seeking to control the freedmen (former slaves), devised special state law codes. Many Northerners saw these codes as blatant attempts to restore slavery.

Ex-slaves join a convoy of federal troops heading toward the North. (Corbis)

Five days after the Civil War ended, President Abraham Lincoln was shot. He died on April 15, 1865, and Vice President Andrew Johnson assumed the presidency. The task of reuniting the nation fell on his shoulders. A Southerner, Johnson favored readmitting the Southern states as quickly as possible into the Union. He appointed military governors who held complete power in the former Confederate states until new civilian governments could be organized.

Little thought had been given to the needs of the newly emancipated slaves. Shortly before the end of the war, Congress created the Freedmen's Bureau. It furnished food and medical aid to the former slaves. It also established schools for the freedmen. By 1870, a quarter million black children and adults attended more than 4,000 of these schools in the South.

US HISTORY

The Freedmen's Bureau also helped the former slaves in the workplace. It tried to make sure that the former slaves received fair wages and freely chose their employers. The bureau created special courts to settle disputes between black workers and their white employers. It could also intervene in other cases that threatened the rights of freedmen.

White Southerners resented being ruled by Union military governors and Freedmen's Bureau officials. They sought to restore self-rule. During the summer and fall of 1865, most of the old Confederate states held constitutional conventions. President Johnson's reconstruction plan permitted only white persons to vote for convention delegates or to participate in the framing of the new state governments. Not surprisingly, none of the state conventions considered extending the right to vote to the freedmen. South Carolina's provisional governor declared at his state constitutional convention that "this is a white man's government."

By the end of the year, most of the South had held elections under the new state constitutions. Often, ex-Confederate leaders won elections for state government offices and for U.S. Congress.

The newly formed state legislatures quickly authorized many needed public projects and the taxes to pay for them. Among these projects was the creation, for the first time in the South, of free public education. But the public schools excluded black children.

The state legislatures also began to pass laws limiting the freedom of the former slaves. These laws mirrored those of colonial times, which placed severe restrictions on both slaves and emancipated blacks. Neither of these groups could vote, serve on juries, travel freely, or work in occupations of their choice. Even their marriages were outside the law.

The white legislators saw little reason not to continue the tradition of unequal treatment of black persons. An editorial in the Macon, Georgia, *Daily Telegraph* reflected the widely held opinion of the white South at this time: "There is such a radical difference in the mental and moral [nature] of the white and black race,

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that it would be impossible to secure order in a mixed community by the same [law]."

White Southerners also feared that if freedmen did not work for white landowners, the agricultural economy of the South would collapse. During the last months of 1865, a rumor spread among freedmen: The federal government was going to grant "40 acres and a mule" to every ex-slave family on Christmas Day. Although the federal government had confiscated some Confederate lands and given them to freed slaves, it never planned to do this on a massive scale. Nonetheless, expecting their own plots of land, blacks in large numbers refused to sign work contracts with white landowners for the new year. At the same time, Southern whites passed around their own rumor that blacks would rise in rebellion when the free land failed to appear on Christmas Day.

The Freedmen's Bureau set up thousands of schools in the South, teaching black children and adults. (Corbis)

All these economic worries, prejudices, and fears helped produce the first Black Codes of 1865. These codes consisted of special laws that applied only to black persons. The first Black Code, enacted by Mississippi, proved harsh and vindictive. South Carolina followed with a code only slightly less harsh, but more comprehensive in regulating the lives of "persons of color."

The South Carolina Black Code

South Carolina's Black Code applied only to "persons of color," defined as including anyone with more than one-eighth Negro blood. Its major features included the following:

1. Civil Rights

The Southern Black Codes defined the rights of freedmen. They mainly restricted their rights. But the codes did grant black persons a few more civil rights than they possessed before the Civil War. South Carolina's code declared that "persons of color" now had the right "to acquire, own and dispose of property; to make contracts; to enjoy the fruits of their labor; to sue and be sued; and to receive protection under the law in their persons and property." Also, for the first time, the law recognized the marriages of black persons and the legitimacy of their children. But the law went on to state that, "Marriage between a white person and a person of color shall be illegal and void."

2. Labor Contracts

The South Carolina code included a contract form for black "servants" who agreed to work for white "masters." The form required that the wages and the term of service be in writing. The contract had to be witnessed and then approved by a judge. Other provisions of the code listed the rights and obligations of the servant and master. Black servants had to reside on the employer's property, remain quiet and orderly, work from sunup to sunset except on Sundays, and not leave the premises or receive visitors without the master's permission. Masters could "moderately" whip servants under 18 to discipline them. Whipping older servants required a judge's order. Time lost due to illness would be deducted from the servant's wages. Servants who quit before the end date of their labor contract forfeited their wages and could be arrested and returned to their masters by a judge's order. On the other hand, the law protected black servants from being forced to do "unreasonable" tasks.

3. Vagrancy

All Southern Black Codes relied on vagrancy laws to pressure freedmen to sign labor contracts. South

Carolina's code did not limit these laws to unemployed persons, but included others such as peddlers and gamblers. The code provided that vagrants could be arrested and imprisoned at hard labor. But the county sheriff could "hire out" black vagrants to a white employer to work off their punishment. The courts customarily waived such punishment for white vagrants, allowing them to take an oath of poverty instead.

4. Apprenticeship

Southern Black Codes provided another source of labor for white employers—black orphans and the children of vagrants or other destitute parents. The South Carolina code authorized courts to apprentice such black children, even against their will, to an employer until age 21 for males and 18 for females. Masters had the right to inflict moderate punishment on their apprentices and to recapture runaways. But the code also required masters to provide food and clothing to their apprentices, teach them a trade, and send them to school.

5. Courts, Crimes, and Punishments

South Carolina's Black Code established a racially separate court system for all civil and criminal cases that involved a black plaintiff or defendant. It allowed black witnesses to testify in court, but only in cases affecting "the person or property of a person of color." Crimes that whites believed freedmen might commit, such as rebellion, arson, burglary, and assaulting a white woman, carried harsh penalties. Most of these crimes carried the death penalty for blacks, but not for whites. Punishments for minor offenses committed by blacks could result in "hiring out" or whipping, penalties rarely imposed on white lawbreakers.

6. Other Restrictions

South Carolina's code reflected the white obsession with controlling the former slaves. It banned black people from possessing most firearms, making or selling liquor, and coming into the state without first posting a bond for "good behavior." The code made it illegal for them to sell any farm products without written permission from their white employer, supposedly to guard against stealing. Also, blacks could not practice any occupation, except farmer or servant under contract, without getting an annual license from a judge.

Congressional Reconstruction

The Mississippi and South Carolina Black Codes of 1865 provoked a storm of protest among many Northerners. They accused Southern whites of trying to restore slavery. Congress refused to seat Southerners elected under the new state constitutions. A special congressional committee investigated whether white Southern Reconstruction should be allowed to continue.

In the South, the Mississippi and South Carolina Black Codes never went into effect. The Union military governors and the Freedmen's Bureau immediately declared them invalid. Fearing that their self-rule was in jeopardy, the two states revised and moderated their codes. Christmas Day came without either the free land that freedmen had hoped for or the bloody rebellion that whites had dreaded. Instead, as the new year began, freedmen all over the South signed labor contracts and went back to work.

Economic worries, prejudices, and fears helped produce the first Black Codes of 1865.

Under the less tense conditions in 1866, most other former Confederate states wrote Black Codes that paid more attention to the legal equality of whites and blacks. But the belated efforts of the white Southerners to treat the freedmen more fairly under the law came too late.

Along with the Black Codes, other events helped alter the course of Reconstruction: The 14th Amendment passed, and a new Congress hostile to the South was elected. This Congress took control of Reconstruction. When President Johnson vetoed its Reconstruction legislation, Congress overrode his vetoes. The battles with Johnson led ultimately in 1868 to his impeachment by the House, the first impeachment of a president in American history. (The Senate failed to convict him by one vote.)

Under the direction of Congress, most Southern states held new constitutional conventions in 1867–68. This

(Continued on next page)

time the freedmen voted and participated. The resulting new state constitutions guaranteed the right of black adult males to vote and run for public office. For the first time, some blacks won election to Southern state legislatures and to Congress. By 1868, most states had repealed the remains of discriminatory Black Code laws.

But Reconstruction did not last long. By 1877, it was dead. The North had lost interest in helping Southern blacks. Many factors had helped kill Reconstruction: economic troubles in the country, a more conservative consensus within the nation, a general feeling in the country that Reconstruction had failed, the resurgence of the Democratic party, and a growing respectability for racist attitudes.

Southern states began trying to end black voting. By 1910, all Southern states had excluded blacks from voting. In the 1890s, Southern states enacted a new form of Black Codes, called "Jim Crow" laws. These laws made it illegal for blacks and whites to share public facilities. This meant that blacks and whites had to use separate schools, hospitals, libraries, restaurants, hotels, bathrooms, and drinking fountains. These laws stayed in effect until the 1950s and 1960s, when the civil rights movement launched an all-out campaign against them. Ultimately, the U.S. Supreme Court declared these laws unconstitutional, and the U.S. Congress passed civil rights legislation ensuring equal rights for all citizens.

For Discussion and Writing

1. Why did white Southerners believe that a separate code of laws applying only to "persons of color" was necessary?
2. Northerners protested that the Black Codes of South Carolina and other Southern states attempted to restore slavery. Do you agree or disagree? Why?
3. Do you think that the U.S. government should have confiscated lands owned by Confederate leaders to provide "40 acres and a mule" to the landless freedmen? Why or why not?

For Further Reading

Franklin, John Hope. *Reconstruction After the Civil War*, 2nd ed. Chicago: University of Chicago Press, 1994.

Wilson, Theodore B. *The Black Codes of the South*. University of Alabama Press, 1965.

ACTIVITY

"Equal Protection of the Laws"

The 14th Amendment, ratified in 1868, attempted to prevent discriminatory state laws such as those that made up much of the Southern Black Codes of 1865–66. Section 1 of the 14th Amendment reads, in part:

All persons born or naturalized in the United States . . . are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens . . . nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

In this activity, students will compare the requirements in Section 1 of the 14th Amendment with the laws included in the South Carolina Black Code of 1865.

Form six groups, each to evaluate one area in the South Carolina Black Code described in the article. Group members should first read Section 1 of the 14th Amendment. Then they should decide which parts of their Black Code area seemed to violate Section 1 provisions. Finally, each group should report its conclusions to the rest of the class.

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CONSTITUTIONAL RIGHTS FOUNDATION

POSTSCRIPT

CRF PUBLICATIONS

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This issue of ***Bill of Rights in Action*** offers you a small sampling of what you'll find in all Constitutional Rights Foundation (CRF) publications. With engaging readings, discussions, and activities, CRF materials help students develop critical-thinking skills. If you need materials that hold students' interest and engage their minds, consider these CRF publications. . .

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Thanks to a generous grant from the W.M. Keck Foundation of Los Angeles, Constitutional Rights Foundation has developed an exciting new publications series that addresses key issues facing our nation: Ideal for Government and Civics, 20th Century U.S. History, Contemporary Problems, and Law-Related Courses.

BRIA Feedback

We welcome your comments on this issue and recommendations of themes for future issues of ***Bill of Rights in Action***. Send your feedback and information to **bill@crf-usa.org**.

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Grades 9–12

The first volume in the W.M. Keck Foundation Series, this 72-page supplementary text challenges students to grapple with one of America's most vexing problems—violence. Motivating readings and interactive lessons allow students to:

- Place the problem of violence in a historical context; explore the problems of violence today, including gangs and youth violence; and learn about causes and risk factors.
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- Move beyond the classroom and learn how to take action against violence in their own lives and communities.

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Grades 9–12

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- Apply critical-thinking skills to urban myths and rumors, conspiracy theories, and paranormal phenomena.
- Address policy issues relating to censorship and the Internet.

***The Challenge of Information* Teacher's Guide includes. . .**

- "Countdown to Doomsday"—an exciting Internet activity in which students take on the role of investigative reporters who must separate fact from fiction.

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- Interactive lessons for each reading with directed discussions, role plays, simulations, and critical-thinking exercises.
- Civil Conversations—Socratic-style discussions on provocative issues.
- Information-Age Checklists for gathering and evaluating information. ***The Challenge of Information*** is fully illustrated with photos and editorial cartoons.

Coming Soon! *The Challenge of Diversity*

Diversity is one of our nation's most valuable assets, lending vitality and strength to our national character. Yet issues of diversity continue to present us with some of our greatest challenges. The third in the W.M. Keck Foundation Series, ***The Challenge of Diversity*** will help students explore the historical background and evaluate current perspectives on issues of race and ethnicity within the United States.

For more information on these and other CRF publications, see our **Online Catalog** at **www.crf-usa.org** or call **(800) 488-4CRF**.

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Grades 9–12

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We are adding new publications, research links, and other resources to our web site every day. In addition, we have recently revamped the CRF web site to make navigation faster, easier, and more effective. Browse this constantly updated site to see what's new. You'll want to return, so be sure to bookmark our URL: www.crf-usa.org.

Impeachment: Gone but Not Forgotten

The impeachment crisis has been resolved in Congress. The media has moved on in search of new topics. But the impeachment proceedings against William Jefferson Clinton will go down in history as one of the formative events of the 20th century and in June 1999, Congress must decide whether to renew the controversial Independent Counsel Statute.

To help students put the impeachment process in perspective, CRF has posted **WebLessons: Impeachment** on the Internet. This comprehensive set of classroom resources will enable your students to continue to explore and evaluate this critical episode in American history. CRF's **WebLessons: Impeachment** includes:

"**The Impeachment of Andrew Johnson**," a reading on the only president to be tried by the Senate and an activity in which students decide on whether there should be additional grounds for impeachment aside from treason, bribery, and high crimes and misdemeanors.

"**High Crimes and Misdemeanors**," a reading on the meaning of this strange phrase that is the grounds for most impeachments and an activity in which students determine the outcome of hypothetical impeachment proceedings.

"**Independent Counsel**," a reading on the background and pros and cons of the Independent Counsel Statute and an activity in which students role play members of Congress deciding on whether to renew the statute.

"**What Should Congress Do?**," a webquest in which students role play newspaper editors who must research on the Internet and write an editorial on Congress's handling of the Clinton controversy.

Additionally, CRF's **Impeachment Links**, the most comprehensive and reliable links to impeachment, are available on the CRF web site. You can find **WebLessons: Impeachment** on our web site at **www.crf-usa.org**.

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BRIA Online—Instant Research Links for Students, Teachers

Want to know more about the people, places, and issues discussed in ***Bill of Rights in Action***? Just click on the underlined words or phrases in each new **BRIA Online** article and your browser will take you to a relevant, research-related site on the Internet. For example, in the current BRIA Online edition of "The Death Penalty and Human Rights," students will find links to organizations that support and oppose the death penalty.

Back Issues of CRF Newsletters Now Available on the Internet

Check out our Internet archive of easy-to-download editions of CRF newsletters. ***Bill of Rights in Action***, ***Service-Learning Network***, and ***Sports & the Law*** are available free of charge from the CRF web site at: **www.crf-usa.org/publications.html**.

CRF PROGRAM NEWS

CityYouth Teachers and Staff Host Two-Day L.A. Workshop

LOS ANGELES—Experienced teachers and the capable CRF program staff will team up to present a hands-on, two-day workshop on CityYouth, Constitutional Rights Foundation's ground-breaking middle-school curriculum. The workshop will be held April 15–16, 1999 in Los Angeles. CityYouth is a multidisciplinary, civic-participation program, designed for use by math, science, social studies, and language arts teachers in the middle grades.

The two-day workshop will focus on content, design, and methodologies of the CityYouth curriculum. In addition to the full CityYouth curriculum, workshop participants will receive useful supplemental materials outlining service projects, possible curriculum modifications, and strategies for school site implementation. **For more information**, contact Gregorio Medina, CityYouth Program Manager, (213) 316-2121; e-mail: gregorio@crf-usa.org. Or write CityYouth, Constitutional Rights Foundation, 601 S. Kingsley Drive, Los Angeles, CA 90005.

CRF to Inaugurate Week-Long Summer Law Camp

The 1999 CRF Law Camp will take place on the UCLA campus August 1–7. Students will participate in mock trial workshops, expand their understanding of the legal system, build research skills, work with experienced group leaders in team building and leadership activities, and learn about life on a college campus. For more information, contact Katie Moore via e-mail (katie@crf-usa.org) or call (213) 316-2104.

About CRF

Constitutional Rights Foundation is a non-profit, non-partisan citizenship education organization with programs and publications in law, government, civic participation, and service learning. Since 1962, CRF has used education to address some of America's most serious youth-related problems: apathy, alienation, and lack of commitment to the values essential to our democratic way of life.

Through a variety of civic-education programs developed by CRF staff, young people prepare for effective citizenship and learn the vital role they can play in our society. Empowered with knowledge and skills, our youth can interact successfully with our political, legal, and economic systems. CRF is dedicated to assuring our country's future by investing in our youth today.

How to Contact Us

For more information about CRF programs and curriculum materials, please contact our office at (213) 487-5590; Fax (213) 386-0459; e-mail us at crf@crf-usa.org, or visit CRF's web site at www.crf-usa.org.

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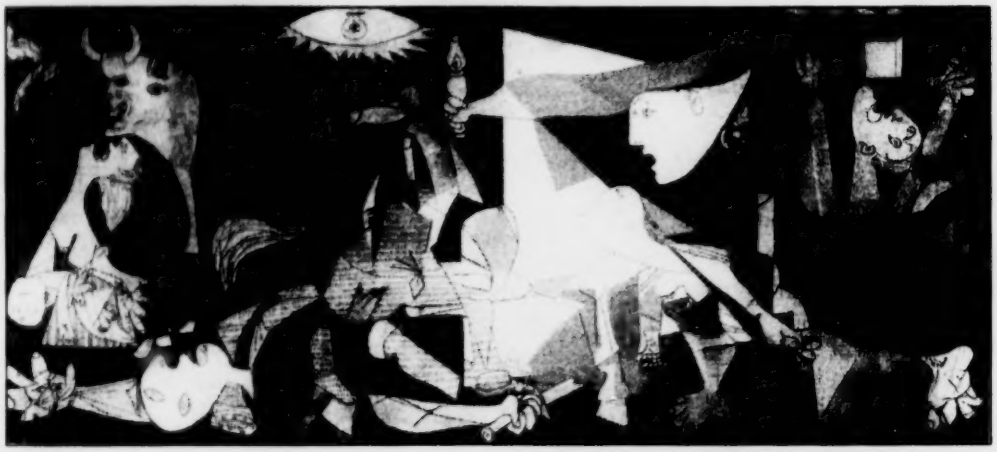
The
BILL OF RIGHTS IN ACTION

CONSTITUTIONAL RIGHTS FOUNDATION SUMMER 1999 VOLUME 15 NUMBER 3

Firestorms: The Bombing of Civilians in World War II

Before World War II, most nations condemned targeting civilians in bombing raids. As the war went on, the nations at war expanded their bombing targets from military to industrial ones, then to workers' houses, and finally to entire cities and their civilian populations.



The 1937 Nazi bombing of civilians in Guernica, Spain, prompted Pablo Picasso to paint this memorial to the victims. Titled "Guernica," the massive painting measures almost 12 feet high and 26 feet long. (© 1999 Estate of Pablo Picasso / Artists Rights Society [ARS], New York)

In the late afternoon of April 26, 1937, German bombers and other warplanes attacked Guernica, a town of about 7,000 persons in northern Spain. This raid was part of the Spanish Civil War, fought just before World War II. The Spanish Republic was battling rebels led by Spanish General Francisco Franco. Hitler had sent a special air force unit to Spain to aid Franco and to test new military aircraft and bombing tactics.

WORLD HISTORY

In the assault on Guernica, German pilots left a small munitions factory and other possible military targets untouched. They aimed their explosive and incendiary (fire) bombs into the center of the town. A squadron of experimental aircraft dropped the first bombs on the plaza in front of the railroad station filled with war refugees. An eyewitness described what happened:

> A group of women and children. They were lifted high into the air, maybe 20 feet or so, and they started to break up. Legs, arms, heads, and bits and pieces flying everywhere.

Another wave of heavy bombers followed, destroying most of Guernica's buildings, even a church and hospital. People were blown up in their houses, crushed by collapsing structures, and set afire in the streets. A third wave of fighter planes then machine-gunned terrified men, women, and children as

(Continued on next page)

Rules of War

This *Bill of Rights in Action* looks at controversies in this century involving rules of war. The first article examines the bombing of civilians, initially denounced as barbaric but eventually adopted by all sides during World War II. The second article explores the decision to drop the atomic bomb on Japan. The final article examines efforts to stop the spread of nuclear weapons.

World History:
Firestorms: The Bombing of Civilians in World War II

U.S. History:
Choices: Truman, Hirohito, and the Atomic Bomb

U.S. Government:
New Threats to Nuclear Non- Proliferation

This issue of the Bill of Rights in Action *is made possible by a generous grant from the W.M. Keck Foundation*

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they ran for their lives. About 1,000 civilians were slaughtered during the three-hour assault.

Accounts of the attack on Guernica in French newspapers shocked the world. For the first time in history, bombing from the air had destroyed an entire town. The intentional slaughter of innocent people so enraged Pablo Picasso, the Spanish artist, that he immediately went to work on a painting based on the bombing attack. The painting, which he titled "Guernica," became an icon for the terror experienced by civilians in war.

But the attack on Guernica turned out to be only a preview of a new type of war. In this new "total war," military strategists purposely tried to destroy entire cities and their civilian populations.

Civilian Bombing and the Laws of War

Attempts to control warfare from the air occurred as early as 1899. European powers agreed at The Hague (a Dutch city) to prohibit dropping explosives "from balloons or by other new methods of a similar nature." The Hague Convention of 1907 went further by banning bombardments "by whatever means" on "undefended" towns.

World War I saw the first civilian casualties from air bombing. In 1915, the first-reported victim was an English child killed by a bomb dropped from a German zeppelin (an airship more rigid and larger than a blimp). Throughout the war, zeppelin and airplane attacks on English and German cities killed almost 2,000 civilians.

The attack on Guernica turned out to be only a preview of a new type of war.

After World War I, European and American military strategists debated what would happen if civilians became the main targets of air-bombing attacks. An influential Italian military writer, General Giulio Douhet, actually argued for the sustained bombing of civilians. He predicted that they would become quickly demoralized by such bombing and would force their leaders to surrender.

Despite the theories of Douhet, most at this time felt that bombing civilians was uncivilized and should be prohibited. In 1923, Britain, France, Italy, Japan, and the United States agreed to a set of rules for air warfare. One article prohibited bombing from the air "for the purpose of terrorizing the civilian population . . . or of injuring noncombatants. . . ." The participating governments, however, never ratified these rules, so they were not legally binding. At the Geneva Disarmament Conference of 1932, most of the world's powers agreed that air attacks on civilians violated the laws of war. But the conference broke up before approving a final agreement.

In the years leading up to World War II, Japan became the first power to attack civilians from the air. In 1932, Japanese warplanes bombed a worker district in Shanghai, China, an incident that produced worldwide outrage. The outrage did not stop Japan from bombing civilian areas of other Chinese cities.

In 1936, Italian dictator Mussolini ordered an attack on the largely defenseless east African country of Ethiopia. When Mussolini's warplanes struck the capital city, causing many civilian casualties, the world again condemned the slaughter of innocent people. The following year, the Germans bombed Guernica.

Along with many other nations, the United States denounced the Japanese, Italian, and German bombing of civilians as "contrary to principles of law and humanity." But the terror bombing of civilians was only beginning.

"Precision" vs. "Area" Bombing

Hitler introduced a new form of aggression in 1939. He ordered his military to attack Poland, thus starting World War II in Europe. "Blitzkrieg" soon came to mean lightning-fast assaults, not only by land troops and tank divisions, but also by warplanes bombing both military and civilian targets. The Germans hit the Polish capital of Warsaw especially hard, with indiscriminate bombing killing thousands of civilians.

In May 1940, the Nazis invaded the Netherlands on their way to France. Easily overcoming Dutch defenders, the Germans still bombed the center of Rotterdam with explosive and fire bombs, killing tens of thousands.

From fall 1940 through spring 1941, Hitler's air force struck London and other English cities with terrifying night bombing raids. The bombing of London, the main target of German planes, cost the lives of 30,000 people.

Driven from the continent, the British could only strike back by mounting their own bombing campaign

against the Germans. At first, the Royal Air Force (RAF) attempted to bomb only specific German military and industrial targets in daytime raids. But the lack of fighter-plane support made these raids risky, and bombs often missed their precise targets because of poor bombsights.

In February 1942, the British abandoned their "precision bombing" strategy. For the rest of the war, the British concentrated on the systematic widespread destruction of German cities by RAF nighttime air raids, a strategy called "area bombing." One reason the British took this fateful step was to "dehouse" the German people, which hopefully would shatter their morale and will to continue the war.

The German city of Dresden, with its unique Baroque architecture, lay in ruins after allied bombing raids on February 13 and 14, 1945. At least 35,000 people died. (AP/Wide World Photos)

The clearest demonstration of the destructiveness of British area bombing occurred in 1943 during three night raids on Hamburg, Germany. On the second night of bombing, something unexpected happened. The fire bombs dropped by 731 RAF bombers started thousands of fires. They merged to create a huge firestorm, sucking up oxygen and generating hurricane force winds. Many who did not burn to death were asphyxiated in underground bomb shelters. The firestorm killed more than 40,000 people in one night.

When the United States entered the war in Europe, its Army Air Corps had better fighter-plane support and bombsights than the RAF. It could maintain its long-standing policy of daytime precision bombing. The Americans believed that the most effective way to destroy the enemy's ability to continue the war was to strike specific targets like aircraft factories and oil refineries.

Following German rocket attacks against London late in the war, almost 800 RAF bombers bombed Dresden, a center of German art, architecture, and culture. It had been untouched by previous Allied bombing raids. The attack's stated purpose was to disrupt German troop transports to the Russian front. But at least 35,000 civilians died, mainly by inhaling toxic gases created by the second major firestorm of the war. American bombers killed more civilians the next day when they had difficulty hitting their targets through all the smoke.

Firestorms in Japan

After Germany surrendered in May 1945, America wanted to quickly end the war against Japan. As plans went ahead for a costly invasion of the Japanese islands, Major General Curtis LeMay took command of the bombing campaign against Japan, which had started in late 1944. Having studied British area-bombing tactics, LeMay decided to adopt them in a final effort to force the Japanese to surrender.

On the night of March 9–10, 1945, LeMay's B-29 bombers attacked Tokyo, a city of 6 million people. Nearly 600 bombers dropped 1,665 tons of fire bombs on the Japanese capital, destroying 16 square miles of the city. The resulting firestorm killed 100,000 people, more than died at Hiroshima or Nagasaki from atomic bombs a few months later. Most of the victims were women, children, and old men. The B-29 crew members put on oxygen masks to keep from vomiting at the smell of burning human flesh.

LeMay's planes continued firebombing Tokyo and more than 60 other Japanese cities in the following months. He thought he could end the war quickly by destroying Japan's economy and crushing the morale of the Japanese people. LeMay argued against using atomic bombs. He believed that his firebombing tactics would force Japan to surrender before American forces were scheduled to invade the homeland.

On August 6, 1945, one B-29 dropped an atomic bomb on Hiroshima, creating a firestorm that wiped out 70 percent of the city and killed 70,000 Japanese. The atomic bomb attack on Nagasaki three days later was somewhat less destructive due to the geographical features of the city. After some hesitation, Japan finally surrendered. The decision to use atomic weapons was fairly easy for American political and military leaders, given the hundreds of thousands of civilian deaths

(Continued on next page)

already caused by the bombing of cities during the war. The outrage about such killing at the beginning of the war had been numbed by the horror of "total war" and the desire to quickly bring it all to an end.

The Allied area bombing of civilians played an important role in undermining the will of the German and Japanese people to continue the war. But unlike the predictions of military strategists before the war, this did not happen quickly. For a long time, the bombing of German and Japanese civilians only stiffened their resolve to fight on. They wanted to surrender only after their countries lay in ruins, hundreds of thousands had perished, and all hope of victory was lost.

After World War II

Following World War II, the Cold War developed between the United States and Soviet Union. It never erupted into actual warfare, but the possibility of World War III loomed. The two nations engaged in a nuclear arms race. Each targeted the other's civilian population, aiming thermonuclear missiles at cities. The massive destructiveness of nuclear weapons made avoiding civilians impossible. It also made nuclear war unwinnable. The standoff between the two nuclear superpowers ended in 1991, when the Soviet Union disbanded. Nuclear war had been avoided, but the threat remains that some nation might use them someday.

Although no nuclear war has occurred since World War II, many limited, non-nuclear wars have taken place. America has engaged in wars in Korea, Vietnam, Iraq, and Kosovo. It has never again targeted civilians as it did during World War II, but many civilians have died in these wars. Their deaths usually resulted from mistake, accident, or being too close to a military target. With advances in technology, weapons have grown more accurate. The "precision bombing" of World War II often missed their targets. Today's cruise missile usually hits its mark. But even with today's "smart bombs" and precise targeting, civilians still die.

The aftermath of World War II brought more attempts to protect civilians in war. The Geneva Convention of 1949 stated that civilian hospitals "may in no circumstances be the object of attack . . . ." The U.N. General Assembly adopted several resolutions, which are not legally binding but do carry the weight of international opinion. A 1961 resolution declared that the "use of nuclear and thermo-nuclear weapons" violates the "spirit, letter and aims of the United Nations." Another resolution in 1968 proclaimed that no nation should "launch attacks against . . . civilian populations . . . ." The World Court in 1996 made an advisory opinion on nuclear weapons. It ruled that "the threat or use of nuclear weapons would generally be contrary to the rules of international law . . . ." But it stated that international law was unclear on whether they could be used "in an extreme circumstance of self-defence, in which the very survival of a State would be at stake."

For Discussion and Writing

1. What were the arguments for "precision" and "area" bombing in World War II? Which one do you think was the better strategy? Why?
2. Maj. Gen. Curtis LeMay said after the March 9–10 Tokyo bombing, "There are no innocent civilians. . . . The entire population got into the act and worked to make those airplanes or munitions . . . men, women, and children." Do you agree or disagree with LeMay? Why?
3. Do you think international law should define rules of war? Why or why not?

For Further Reading

Crane, Conrad C. *Bombs, Cities, and Civilians.* Lawrence, Kan.: University Press of Kansas, 1993.

Werrell, Kenneth P. *Blankets of Fire, U.S. Bombers Over Japan During World War II.* Washington: Smithsonian Institution Press, 1996.

ACTIVITY

A New Hague Convention

One way that international law is created is by nations signing treaties and charters that bind them to follow particular rules. Throughout the 20th century, international conferences have attempted to write rules protecting civilians in time of war. In this activity, students will role play nations attending a new Hague Convention. It has been convened to clarify and enact international laws protecting civilians in wartime.

Form small groups. Each group should:

A. Review and discuss the rules protecting civilians mentioned in the article.

B. Write a new rule or rules it thinks should be adopted.

C. Present to the whole class its rules and the reasons for them.

Choices: Truman, Hirohito, and the Atomic Bomb

In summer 1945, President Truman focused on two choices to end the war with Japan: invade or use the atomic bomb. Truman ordered the bomb dropped on two Japanese cities. His decision created a controversy that is with us today.

On August 6, 1945, the world changed forever. A single American B-29 bomber, the *Enola Gay*, dropped one atomic bomb on Hiroshima, Japan. About 70,000 persons, some military but mostly civilian, perished in the blast and the firestorm that resulted from it. Another 50,000 died later from injuries and radiation sickness. Three days after Hiroshima, some 60,000 Japanese died when a plane dropped a second bomb on Nagasaki.

A mushroom cloud rose over Nagasaki, Japan, on August 9, 1945 moments after the atomic bomb was dropped. The next day, the Japanese sent word that they would surrender. (AP/Wide World Photos)

The intentional bombing of civilians had been going on for quite some time—first by the Germans and Japanese and then by the British and Americans. About 100,000 Japanese died during American fire bombing raids on Tokyo five months before Hiroshima and Nagasaki. But what made atomic bombs even more frightful were the largely unknown short- and long-term effects of radiation and their capacity for worldwide destruction.

US HISTORY

Truman: "The Most Terrible Bomb"

Shortly after Hitler began World War II in Europe, physicists Leo Szilard and Albert Einstein wrote a letter to President Roosevelt. They urged him to set up a project to develop an atomic bomb, which they believed Germany was already working on. Roosevelt initiated the "Manhattan Project" in 1941. He placed General Leslie R. Groves in command of a group of scientists headed by J. Robert Oppenheimer. From the very beginning, almost everyone involved in this project believed that America would use the atomic bomb to end the war.

When Roosevelt died on April 12, 1945, Vice President Harry S. Truman became president. Unfortunately, Roosevelt had never included his vice president in discussions about the atomic bomb. Two weeks after becoming president, he was finally fully briefed about "the gadget," as General Groves called the bomb.

The bomb was not ready for testing before Germany unconditionally surrendered on May 7, 1945. Seeking advice, as the war in the Pacific continued, Truman authorized a group of civilian leaders and scientists to make recommendations on its use. Headed by Secretary of War Henry L. Stimson, the so-called Interim Committee decided to reaffirm the long-held policy of using the atomic bomb when it was ready.

The Interim Committee also recommended against giving the Japanese any warning or demonstrating the bomb on some uninhabited area. Committee members wanted to assure a total surprise to shock the Japanese government and people into quickly surrendering. The committee agreed that the "most desirable target would be a vital war plant employing a large number of workers and closely surrounded by workers' houses."

The Interim Committee additionally concluded that using the atomic bomb to end the war would make the Soviet Union "more manageable" in the postwar world.

After being briefed on the Interim Committee's recommendations, Truman met with his top military advisors on June 11. Since America had not yet tested the bomb, this group went ahead with plans for an

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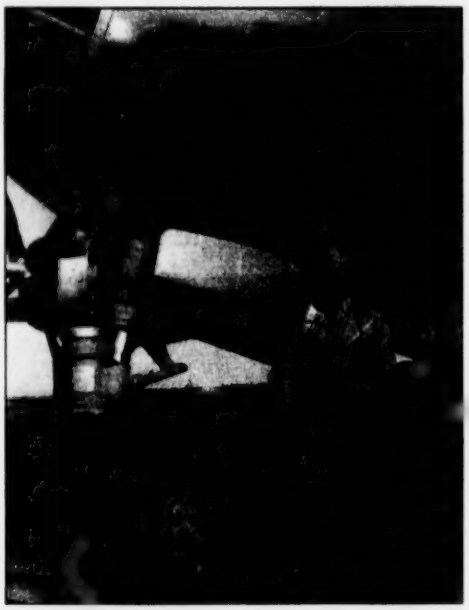
invasion of Japan. Truman wanted to know the number of expected casualties (dead, wounded, and missing). The casualty estimates for the projected invasion varied greatly and became the subject of much controversy after the war. The Army-Navy estimate for the invasion was about 200,000 American casualties, which would have included 50,000 killed.

Dreading the idea of an invasion of Japan, Truman traveled to Potsdam, Germany, to meet with the other Allied leaders in mid-July 1945. Truman was anxious to get Joseph Stalin, the leader of the Soviet Union, to enter the war against Japan. Stalin had previously promised to do this after Germany's defeat even though he had signed a non-aggression treaty with Japan early in the war.



Colonel Paul W. Tibbets, 31, stands beside the B-29 superfortress Enola Gay, *which he piloted on the August 6, 1945, flight to drop the atomic bomb on Hiroshima. (AP/Wide World Photos)*

During the conference, the Americans received a message stating that a bomb had been successfully tested in New Mexico. Truman's attitude brightened, and he no longer seemed so intent on pressuring the Russians to declare war on Japan.

While still at Potsdam, Truman authorized the military to use atomic bombs "when ready but not sooner than August 2." Two atomic bombs were available, and two more were nearing completion. The war planners had selected four target cities including Hiroshima and Nagasaki. Neither city contained major military or industrial installations. They chose them mainly because conventional bombing had already leveled other major cities.

No real debate ever took place among top U.S. military and civilian leaders on whether to drop on Japan what Truman described in his diary as "the most terrible bomb in the history of the world." Only a small group of scientists involved in the Manhattan Project opposed dropping it. They circulated a petition warning of a nuclear arms race with the Soviet Union after the war if America used atomic bombs against Japan. Ironically, the scientist that led this petition effort, Leo Szilard, had also written the letter with Einstein asking Roosevelt to build the bomb.

At the end of the Potsdam Conference on July 26, the Allies at war with Japan issued a declaration. They demanded the "unconditional surrender" of the Japanese armed forces. This meant that the Allies would not consider negotiating peace terms. The declaration also called for the Japanese people to form a new government, which put the future of the Japanese emperor in doubt. It did not mention the atomic bomb or the pending entry of the Soviet Union into the war. But the declaration warned that if Japan did not immediately surrender unconditionally, it would face "prompt and utter destruction."

Hirohito: "We Must Bow to the Inevitable"

Japan's leaders knew nothing about the atomic bomb and little about other U.S. war plans. But Truman and his advisers knew something about what the Japanese leaders were saying and doing. American intelligence had broken Japan's secret code.

By summer 1945, Japan was a nation on the edge of defeat. Its navy hardly existed. Its best airplane pilots had been killed. Its large armies lay scattered and isolated throughout Asia. The American naval blockade of Japan had stopped most shipping, which created major shortages of food and oil. Continuing American bombing raids had leveled most major Japanese cities, killing 200,000 persons.

Still, Japan fought on. From April to June 1944 during the U.S. invasion of Okinawa, an island 400 miles from the Japanese homeland, Japanese forces waged a fierce and desperate battle. Inspired by warrior traditions, the soldiers held on for weeks preferring to die in suicide charges or by their own hand than to surrender. The navy launched waves of suicide airplane attacks on the U.S. ships supporting the invasion. Even many Japanese civilians living on the island killed themselves to avoid capture by the Americans. In finally conquering the island, U.S. forces suffered 48,000 casualties.

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In spite of the loss of Okinawa and overwhelming U.S. military superiority, the Japanese government was deadlocked about what to do. On the one hand, Prime Minister Kantaro Suzuki took office in April 1945 with the goal of ending the hopeless war effort. Suzuki, his foreign minister, and others in the government attempted to get the Soviet Union to act as a go-between in negotiating conditions of surrender to end the war with the United States, Britain, and China. Suzuki was not aware that Stalin had already decided to declare war on Japan in a few months.

Other members of the Japanese government and military leadership strongly opposed surrendering. They argued that Japan should accept "the honorable death of a hundred million" rather than give up. They moved ahead with plans for defending the homeland including the use of 350,000 troops, preparing thousands of pilots and planes for kamikaze attacks and mobilization of hundreds of thousands of civilians, including women, as home defense fighters. They hoped that these measures could repel an American invasion and force the United States to end the war on terms more beneficial to Japan.

Considered a sacred figure in Japanese society, Emperor Hirohito normally remained above government politics. Throughout most of the war, Hirohito never openly opposed any decisions made by Japan's leaders. For instance, Hirohito was present when the decision was made to attack Pearl Harbor, but he remained silent. By early 1945, however, Hirohito had concluded that there should be "a swift termination of the war." When Okinawa fell to the Americans in June, he sent a personal representative to Moscow seeking terms of peace from the Allies.

By August, time had run out for the divided Japanese government and Emperor Hirohito. On August 6, the *Enola Gay* dropped the first atomic bomb on Hiroshima. The political and military leaders still could not agree what to do. Hirohito, now speaking more forcefully than ever before, declared, "We must bow to the inevitable."

On August 9, disaster struck from two directions. The Soviet Union declared war on Japan, and the United States dropped the second atomic bomb on Nagasaki. The government remained paralyzed. The leaders could agree on only one thing: The emperor's position in Japanese society must remain at all cost.

Finally, Prime Minister Suzuki took the unheard-of step of calling upon the emperor himself to break the deadlock between those favoring surrender and those who wanted to fight on. After listening to both sides, Hirohito said that "continuing the war can only mean destruction for the nation." He then declared that Japan must accept surrender.

President Truman steadfastly defended his decision to use the atomic bombs.

On August 10, Suzuki sent a notice of surrender to the Allies with the condition that the emperor would remain as the "sovereign ruler" of Japan. The Allies accepted on one condition. The emperor must yield authority to the supreme commander of the forces occupying Japan until a new government was established "by the truly expressed will of the people." Some Japanese leaders wanted to reject this requirement. But Hirohito announced that he agreed to the Allied terms. All top civilian and military leaders then pledged to obey the emperor's wishes. The war was over.

Other Choices

The war was over, but the debate over how it ended had just begun. In the years that followed, President Truman steadfastly defended his decision to use the atomic bombs. He argued that the bombings of Hiroshima and Nagasaki forced the Japanese to surrender quickly, thus avoiding an invasion that would have cost the lives of thousands of Americans. "I'd do it again," Truman often said.

Truman's advisers had focused mainly on the choice between an invasion and dropping the bomb. From hindsight, scholars researching wartime documents have determined that there were several other options for ending the war:

1. Continue the conventional bombings and blockade. Truman could have relied on the relentless and devastating B-29 firebombing raids on Japan's cities combined with the naval blockade to wear down Japanese resistance and force their surrender.

Scholars critical of this approach point out that strategic bombing may have taken some time to force a surrender putting American pilots, troops and sailors at

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risk. In addition, many more Japanese civilians may have died using this option than were killed in the two atomic raids.

2. Demonstrate the atomic bomb. By demonstrating the atomic bomb, Truman could have shown the Japanese leaders, including Hirohito, that their nation faced total destruction if they did not surrender immediately.

Other scholars point out that the U.S. had only two atomic bombs ready for use and two more in development. The technology was brand new and delivering the bombs was very difficult. A failure of the demonstration might have actually encouraged Japanese resistance and in any case would have given them a chance to take countermeasures.

3. Wait for the Russians. Truman could have waited a few more weeks for the Russians to declare war on Japan. The threat of invasion and occupation by both the Americans and Russians may have had an even more shocking effect on the Japanese leadership than the atomic bombings.

Scholars critical of this approach say it is not clear what Japan might have done in response to a declaration of war by the Soviets. Japanese forces in Asia were already stranded and largely abandoned. It would have taken Soviet forces some time to threaten mainland Japan, and the Japanese already faced overwhelming force from the Americans. Some scholars believe that the United States still would have been faced with an invasion of Japan and the Soviets would have had more time to bring more of Asia under Communist domination.

4. Negotiate peace. Truman knew that Suzuki and Hirohito were trying to find a way to negotiate an end to the war. He could have discussed peace terms with them, but instead refused to consider anything but "unconditional surrender."

Official allied policy was for unconditional surrender for Japan, just as it had been for the Nazi regime. Some scholars question whether arranging negotiations might not have strengthened the war faction of the Japanese government by showing weakness on the part of the allies. They also might have encouraged greater demands on the part of the Japanese, including preservation of the military, and given them more time to prepare for invasion.

5. Keep the emperor. The Japanese leaders might have decided to surrender earlier if Truman and the Allies had assured them that they would neither abolish the position of the emperor nor try Hirohito as a war criminal.

Some scholars point out that the Japanese agreed to surrender only after the bomb was dropped and doubt that the concession about the emperor by itself would have led to immediate surrender.

In the end, Truman concluded that none of these choices would have ended the war as quickly as an atomic attack. At the time, Truman was under tremendous pressure from the American public to end the long, horrible war against a hated enemy as fast as possible and "bring the boys home." Few of the thousands of American troops being transferred from Europe to prepare for Japan's invasion criticized Truman's decision. For many, it saved their lives.

Did Truman make the right decision? More than 50 years later, this question remains unsettled.

For Discussion and Writing

1. Why did President Truman order the use of atomic bombs against Japan?
2. What role did Emperor Hirohito play in the surrender of Japan?
3. Some have argued that there really was very little difference in the use of atomic bombs and conventional bombs against Japan. Do you agree or disagree? Why?

A C T I V I T Y

Choices: Ending the War with Japan

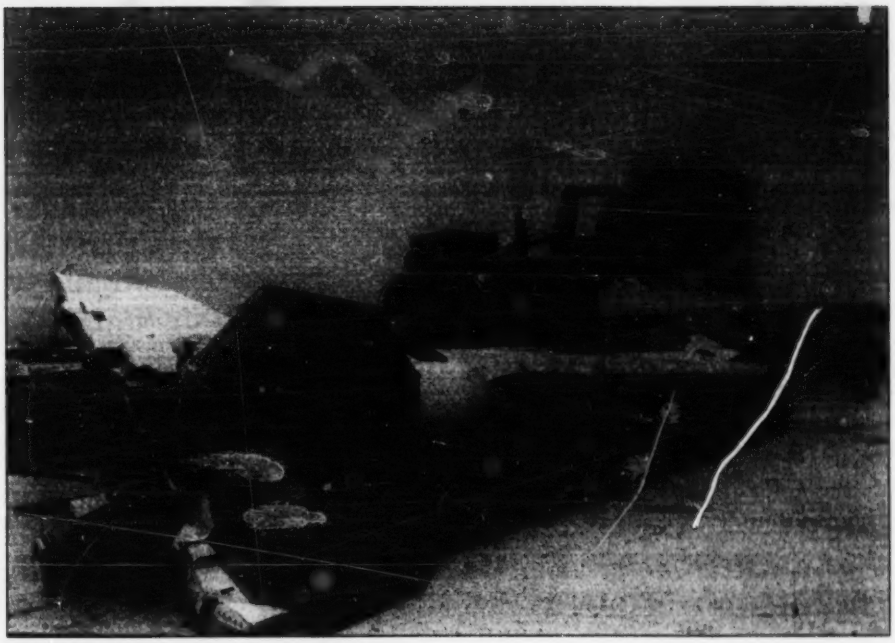
In this activity, students will role play members of a committee of advisers to President Truman. This committee must debate the choices and then make a recommendation to the president on how to end the war.

A. Form small groups and review the president's options: (1) Continue the conventional bombings and blockade; (2) Demonstrate the atomic bomb; (3) Wait for the Russians; (4) Negotiate peace; (5) Keep the emperor; or (6) Use the atomic bombs.

B. After each group meets, the committee as a whole should discuss and decide on a recommendation. It may be one of the choices listed in the article or some variation or combination of them.

New Threats to Nuclear Non-Proliferation

Today, with the Cold War over and a Non-Proliferation Treaty in place, much has been done to stop the spread of nuclear weapons. But some trouble spots remain.



U.N. weapons inspectors prepare to destroy an Iraqi missile capable of carrying nuclear warheads. (AP/Wide World Photos)

At the end of World War II, the United States alone possessed atomic weapons. In 1949, however, the Soviet Union tested its first atomic bomb. This set off a nuclear arms race with the United States lasting 40 years. Each country eventually produced more than 30,000 nuclear bombs and missile warheads. A recent estimate placed the total cost of the American nuclear-weapons program at $5 trillion.

Other nations also became nuclear powers. In 1952, Great Britain exploded its first atomic bomb. In 1960, France tested a nuclear device, and in 1964 China followed suit. All kept adding nuclear weapons to their arsenals.

U S GOVERNMENT

The Non-Proliferation Treaty (NPT)

The Cuban Missile Crisis of 1962 nearly resulted in nuclear war between United States and the Soviet Union. The following year, the two superpowers, along with Britain, made the first attempt to control nuclear arms development. The three nuclear nations signed a treaty promising not to test atomic weapons in the atmosphere or on land. But the treaty still permitted underground testing.

After China tested its first atomic device in 1964, the nuclear powers initiated negotiations that finally resulted in the Non-Proliferation Treaty of 1968 (in force on March 5, 1970). The NPT takes the form of a series of promises between those nations already possessing nuclear weapons and those nations without them.

Those nations possessing nuclear weapons promise to:

1. not help nations without nuclear weapons acquire or develop them;
2. place security safeguards on their nuclear materials and technology to prevent their export to non-nuclear weapons nations;
3. share nuclear technology for peaceful purposes with all treaty members;
4. work to end the nuclear arms race and reduce their nuclear-weapons stockpiles.

Those nations not possessing nuclear weapons promise to:

1. not acquire or develop nuclear weapons;
2. accept security safeguards, including U.N. inspections, on all domestically produced or imported nuclear materials and technology to assure they are not being used for military purposes;
3. place security safeguards on their nuclear materials and technology to prevent prohibited exports to other non-nuclear weapons nations;
4. share nuclear technology for peaceful purposes with all treaty members.

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Today, about 180 countries, including all five original nuclear powers, have signed the Non-Proliferation Treaty.

Non-nuclear weapons members of the NPT must agree to accept the system of safeguards and inspections of the International Atomic Energy Agency. This independent U.N. agency requires two things from non-nuclear nations. First, they must declare what nuclear materials and equipment they possess. Second, they must submit to regular inspections to make sure nothing they possess is being diverted to weapons development. Most of the treaty members that possess nuclear weapons have also agreed to observe strict security safeguards on such exports as waste from nuclear power plants that could be reprocessed into weapons-grade material.

The Breakup of the Soviet Union

The breakup of the Soviet Union into 15 independent nations in 1991 brought an end to the 40-year Cold War nuclear arms race. The Start II Treaty of 1993 between the United States and Russia greatly reduced the number of nuclear warheads in both countries. The following year, the two powers agreed to stop targeting each other's territory with ballistic missiles. The former Cold War adversaries also declared a suspension of all forms of nuclear testing.

Today, about 180 countries, including all five original nuclear powers, have signed the Non-Proliferation Treaty.

But there was a negative side to the Soviet breakup. Nuclear missiles capable of reaching the United States still existed not only in Russia, but also in three new nations once part of the USSR: Belarus, Kazakhstan, and Ukraine. The United States also grew concerned that these three nuclear nations, as well as Russia, could not effectively keep their nuclear material and technology secure from improper exports or even smuggling. Also troubling was the potential emigration of former Soviet scientists to nations seeking to develop nuclear weapons. To help address these issues, the U.S. Congress granted $800 million in aid to help the former Soviet states "denuclearize."

Iraq

Following the Persian Gulf War in 1991, U.N. inspectors discovered that Iraq had established a massive nuclear-weapons program. It was only a few years away from producing an atomic explosive device. Even more shocking, Iraq had signed the Non-Proliferation Treaty. It had proceeded with a secret nuclear program even though NPT safeguards were in place and inspections were occurring. Iraq had been illegally importing nuclear materials and equipment for years from western nations, including the United States.

The United Nations instituted widespread inspections of Iraqi installations and strengthened safeguards preventing international trade in nuclear materials and technology. This seemed to put the Non-Proliferation Treaty back on track. But in 1998, Iraq's leader, Saddam Hussein, refused to permit U.N. inspectors into certain areas. This led to the removal of the inspectors from Iraq and to U.S. and British bombings of suspected nuclear facilities. In spite of continued bombing, the lack of on-site inspections makes it difficult to prevent Hussein from continuing his pursuit of nuclear and other weapons of mass destruction.

North Korea

The Korean peninsula is divided into South Korea and Communist North Korea. From 1950 to 1953, war raged between North and South, with Chinese troops aiding the North and U.S. troops (acting on behalf of the United Nations) helping the South. Nearly 40,000 American troops remain stationed in South Korea.

North Korea signed the Non-Proliferation Treaty in 1986, but delayed agreeing to required inspections and other safeguards on its nuclear program. Negotiations among the United States, South Korea, and North Korea ended with an agreement in 1991 making the entire Korean peninsula a nuclear weapons–free zone.

In 1992, North Korea signed an agreement allowing U.N. inspections of its nuclear facilities, which had been suspected of producing materials for nuclear weapons. But when the inspectors arrived, North Korea denied them access to some installations. Meanwhile, satellite pictures revealed evidence of continued nuclear-weapons development. In 1993, North Korea withdrew from the Non-Proliferation Treaty, but then quickly suspended its withdrawal.

In 1994, the United States and North Korea reached another agreement. In exchange for the North Koreans freezing their nuclear-weapons program, the Americans promised to provide aid for oil imports. But four years later, the United States detected the North Koreans constructing a huge new underground nuclear complex. The famine-plagued Communist country then demanded massive food shipments before it would allow inspections of this underground facility. In March 1999, the Clinton administration agreed to give North Korea $60 million in food assistance.

India and Pakistan

When India gained its independence in 1947 from Great Britain, it was carved into two countries—India, with a mostly Hindu population, and Pakistan, with an overwhelmingly Muslim population. The two South Asian countries, among the poorest in the world, have never gotten along well. They have already fought three conventional wars and almost fought a fourth in 1990. Hindu-Muslim religious hatreds continue to fuel longstanding border disputes. Currently, the two countries are engaging in a regional nuclear arms race. Neither country has signed the Non-Proliferation Treaty, but both have agreed not to attack each other's nuclear installations.

India exploded its first nuclear device in 1974. When India conducted new nuclear tests in May 1998, Pakistan followed with its first test explosions. In April 1999, India and then Pakistan tested missiles that could hurl nuclear warheads deep inside each other's territory.

Unlike the United States and Soviet Union during the Cold War, India and Pakistan are next door to one another, making missile flight times extremely short. Neither country has the careful controls that the Americans and Soviets developed to prevent accidental missile launchings.

The United States imposed trade and economic aid restrictions on both nations after the round of nuclear tests in 1998. President Clinton said at that time, "I cannot believe that we are about to start the 21st century by having the Indian Subcontinent repeat the worst mistakes of the 20th century." A full-scale nuclear war could leave 100 million dead plus radioactive fallout throughout the rest of Asia and possibly the world.

Is the NPT Working?

Although Iraq, North Korea, India and Pakistan, and a few other countries have the potential for starting a nuclear war, most of the world's nations today have rejected atomic weapons. South Africa had developed a half-dozen atomic bombs. But in 1991, it decided to dismantle them all, the first nuclear-weapons nation to do this. Argentina and Brazil decided not to proceed with their nuclear-weapons programs. Belarus, Kazakhstan, and Ukraine have all agreed to give up their nuclear weapons and sign the Non-Proliferation Treaty. In 1995, 178 nations agreed to extend the NPT indefinitely. The next year, most nations in the world, including the United States, signed a treaty banning all tests of nuclear weapons.

At the end of the century, the Non-Proliferation Treaty seems to be containing the spread of nuclear arms. But just as the United States believed it was justified making and using atomic bombs to end World War II, almost any nation may feel equally compelled at some time in the future to build or acquire, and then use, the ultimate weapon.

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For Discussion and Writing

1. What is the purpose of the Non-Proliferation Treaty? How is it enforced?
2. How did the breakup of the Soviet Union both strengthen and weaken efforts to control the proliferation of nuclear weapons in the world?
3. Which of the nations currently developing nuclear weapons do you think poses the greatest threat to the United States? Why?

For Further Reading

Gardner, Gary T. *Nuclear Nonproliferation, A Primer.* Boulder, Colo.: Lynne Rienner Pub., 1994.

Hirsh, Michael and Barry, John. "Nuclear Jitters." *Newsweek.* 8 June 1998: 22-27.

A C T I V I T Y

Next Steps

In this activity, students decide which area presents the most danger and recommend steps the United States should take to reduce the danger of nuclear war in this area.

Form small groups. Each group should:

a. Review these four areas: (1) Russia, Belarus, Kazakhstan, and Ukraine; (2) Iraq; (3) North Korea; and (4) India and Pakistan.

b. Decide which area presents the most danger of nuclear war and why.

c. Make recommendations on what the United States should do to reduce the danger of nuclear war.

d. Present its decision and recommendations to the rest of the class.

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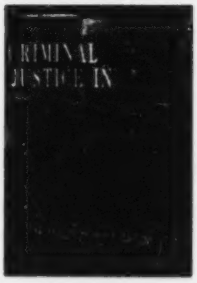
* * *

Criminal Justice in America

Grades 9–12



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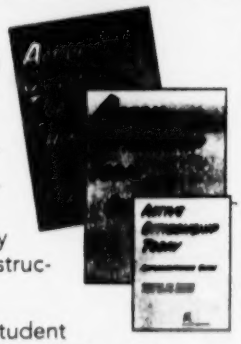

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The
BILL OF RIGHTS IN ACTION

CONSTITUTIONAL RIGHTS FOUNDATION FALL 1999 VOLUME 15 NUMBER 4

Young People and the Internet: Issues of Censorship and Free Expression

The Internet is a wide-open free speech forum that the courts have been reluctant to restrict. But some people believe that something should be done to protect children from accessing online materials that are harmful to them.

In 1998, a 12-year-old boy in Livermore, California, spent his summer downloading dozens of sexually explicit images from the public library's computers connected to the Internet. The library placed no restrictions on adults or children using its Internet computers. The boy printed his collection of pictures on a relative's computer. When the youngster's mother learned of his summertime activity, she sued the Livermore Public Library for allowing him access to materials harmful to minors.

U S GOVERNMENT

The lawyer for the 12-year-old's family argued that children have a right to be protected from harm. "It's the same as if the library had a razor-blade display case," he explained, "and allowed children to handle the blades and the kids got cut." But Livermore's library director countered, "Parents should work to instill the values. Don't expect us to do that."

The lawsuit was later dismissed in court. But the problem of children gaining easy access to sexual, hate, and other potentially harmful materials on the Internet has become a troubling constitutional rights issue. From the Internet's beginning, its users have encouraged free expression and an attitude of "anything goes." But since the

(Continued on next page)

Clash of Cultures and Law

This *Bill of Rights in Action* examines the clash between cultures and law. The first article explores attempts to rein in the Internet, whose culture has resisted outside controls. The second article looks at the first emperor of China and how he tried to impose a harsh legal code on his empire. The last article explores Spain's attempts to write laws for its empire in the New World.

U.S. Government: Young People and the Internet: Issues of Censorship and Free Expression

World History: The Law of Shi Huangdi, First Emperor of China

U.S. History: Laws of the Indies: Spain and the Native Peoples of the New World

This issue of the Bill of Rights in Action *is made possible by a generous grant from the W.M. Keck Foundation*

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mid-1990s, more and more children are going online at home, at school, and at public libraries. Some of these kids are finding things that their parents, teachers, and librarians would never think of giving them in print or other media.

Should children be protected on the Internet? Lawmakers, judges, school board members, and librarians are still not sure how to do this without violating freedom of speech under the First Amendment.

Blocking the Distributors

So far, those seeking to protect children on the Internet have targeted two different groups of people: the distributors and the users of online material. The first major attempt to regulate the distributors occurred in 1996 when Congress enacted the Communications Decency Act (CDA). Two parts of the CDA outlawed the "knowing transmission of obscene or indecent messages to any recipient under 18 years of age" or the "knowing sending or displaying of patently offensive messages in a manner that is available to a person under 18 years of age."

The problem of children gaining easy access to sexual, hate, and other potentially harmful materials on the Internet has become a troubling constitutional rights issue.

This law was immediately challenged in court as violating the First Amendment. The First Amendment states that "Congress shall make no law . . . abridging the freedom of speech . . . ." Despite the amendment's language, the Supreme Court has never ruled that freedom of speech is an absolute right. The court has recognized it as a precious right, but it has placed boundaries on freedom of speech in several areas. For example, the court has upheld laws banning obscenity. The court, however, has strictly defined obscenity. (See "Obscenity: What the Law Says" on page 4.)

But the CDA, which Congress passed, did not just ban obscenity. It also banned "indecent material." Although not clearly defined in the CDA, this phrase was meant to include more than obscenity.

The phrase is used in Federal Communications Commission (FCC) broadcast regulations, which have been upheld by the Supreme Court. The FCC oversees U.S. radio and television broadcasting on the publicly owned airwaves. Its regulations against "indecent material" focus mainly on programming during hours when children may be listening. In upholding these regulations, the court ruled that broadcasting was different from other media. The court pointed out that children had ready access to it and it intruded into people's homes the moment a radio or television set is turned on.

In 1997, the CDA case (*Reno v. American Civil Liberties Union*) reached the U.S. Supreme Court. The CDA's supporters argued that the Internet was similar to radio and television and therefore Congress had the power to ban indecent material on it. The Supreme Court disagreed and held that the CDA violated the First Amendment. Unlike radio and television, the court reasoned, there is no tradition of government regulating the Internet, and the Internet user does not automatically receive messages or content. The court ruled that while the government does have an interest in shielding children from harmful materials, the wording of the law suppressed a broad range of constitutionally protected speech for adults. This fact, the nearly unanimous Court majority said, placed an unconstitutional burden on adult speech.

The following year, Congress wrote a new law that tried to satisfy the Supreme Court's First Amendment requirements. The Child Online Protection Act prohibited anyone from distributing for commercial purposes on the Internet "any material that is harmful to minors" without first verifying that the person is at least 17 years old. The act states that any distributor who checks ages by "verified credit card, debit account, adult access code, or adult personal identification number" will not be prosecuted.

Under the act, harmful material would certainly cover words and images that meet the Supreme Courts' definition of obscenity for adults. But it would also include anything "patently offensive with respect to minors." Congress further defined this as both normal and perverted sexual acts, as well as the "lewd exhibition of the genitals or post-pubescent female breast." These prohibited online words or images would also have to lack "serious literary, artistic, political, or scientific value for minors."

The courts have yet to rule on the constitutionality of the Child Online Protection Act. But early in 1999, a

federal judge granted a preliminary injunction that held off enforcement of the law pending a final court decision. The government must prove that the law's limits on Internet communications are the least restrictive way of protecting minors from material that would be legal for adults to read and view.

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Blocking the Users

So far, the courts have refused to restrict speech on the Internet that is legal for adults. Since many believe that some of this legal material may harm children, the problem arises: Is there a constitutional way to protect children from it? Another way to solve this problem might be to block users from reaching certain Internet content.

Public libraries find themselves caught between those who want to keep children away from inappropriate Internet sites and those guarding against censorship. Libraries have reacted by adopting Internet policies, such as requiring written parent permits, asking children to sign acceptable-use agreements, equipping workstations with privacy screens to block what adults are viewing, and positioning computers so that library personnel can monitor terminals used by children. One of the most promising solutions, however, may be special filtering software to block user access to some Internet sites.

Filtering software generally uses preselected keywords, Internet domains, or lists of web addresses to block access to certain kinds of web sites. A survey conducted in 1998 found that about 15 percent of all U.S. public libraries connected to the Internet were using filters on some of their terminals. Some libraries installed filters on Internet computers used only by children and labeled unfiltered terminals "adults only."

Filters provoke controversy among librarians. The leading national organization of librarians, the American Library Association (ALA), adopted a resolution in 1997. It stated that "the use of filtering software by libraries to block access to constitutionally protected speech violates the Library Bill of Rights." But some librarians, like David Burt of Oswego, Oregon, disagree. They argue for filters on public library computers to shield children from Internet sites containing explicit sex, hate, and other content harmful to minors. Radio talk-show host Dr. Laura Schlessinger, a physiologist, recently attacked the ALA resolution against filtering. She thought it an irresponsible act of advocating unlimited access of minors to obscene and pornographic web sites.

Do Internet filters work? According to a filter-evaluation project conducted by public librarians in 1997, keyword blocking may prevent access to significant amounts of valuable information, such as that concerned with breast cancer and safe sex. Other methods of blocking are also not foolproof, but filters seem to work most of the time.

In 1998, a U.S. district court made the first important court ruling on filtering software in public libraries. The court decided that a Loudoun County, Virginia, policy requiring filters on all its public library Internet computers violated the First Amendment. The court found that while the filtering software may have blocked inappropriate words and images for children, it also prevented adults from accessing legal material. This, the court said, was an unconstitutional restriction of free speech.

At least a dozen states have either passed or are considering laws requiring some kind of Internet filtering on public library and school computers. In Congress in January 1999, Senator John McCain (R-Ariz.) introduced the Children's Internet Protection Act. If it becomes law, this act would mandate filters on all

(Continued on next page)

Obscenity: What the Law Says

The First Amendment does not protect obscene materials that meet **all three** of the following criteria:

1. The average person applying current community standards would find that the material, taken as a whole, appeals to a morbid interest in nudity, sex, or excretion.
2. The material describes or shows sexual conduct in a patently offensive way.
3. The material, taken as a whole, lacks serious literary, artistic, political, or scientific value.

See *Miller v. California*, 413 U.S. 15 (1973).

public-school online computers and on one or more public library terminals hooked up to the Internet. The McCain bill would require the filtering software to block material "harmful to minors" as defined by local school and library officials.

To Filter or Not to Filter?

Those favoring filtering the Internet in public libraries point out that librarians already filter other library resources. For example, most public libraries would not subscribe to *Hustler* magazine or buy X-rated videos. Therefore why should librarians feel they have to allow access to everything on the Internet? What is wrong with filters on computers used only by children, or even an "on/off switch" for adults to use as they choose?

Those opposed to filtering argue that filters allow software companies rather than library professionals to decide what information is appropriate for young people. Also, filters encourage a false sense of security since sometimes they block valuable sites or even permit access to places where children should not be. Finally, is it the job of libraries to censor what children access at the Internet computer? Should not this really be the responsibility of parents or the young people themselves who must learn to live in an online culture?

For Discussion and Writing

1. What do you think is the best approach to take in dealing with obscenity and pornography on the Internet? Why?
   a. punish the distributors of it
   b. block both adult and child user access
   c. block only child user access
   d. let the traditional "anything goes on the Internet" rule
2. What kinds of information and images on the Internet do you think would be "harmful to minors"? Why?
3. Do you think the Child Online Protection Act violates the First Amendment? Why or why not?

For Further Reading

Balas, Janet. "Debating Public Access to the Internet." *Computers in Libraries*. March 1998:42–44.

Gorman, Anna. "Libraries Caught in a Tangled Web." *Los Angeles Times*. 18 Jan. 1999.

ACTIVITY

Debate on Filtering

Imagine that your city council is deciding whether to require filters at your public libraries. The various proposals are to require filters:

a. on all public library computers all the time.
b. on all public library computers with an "on/off switch" activated by the user.
c. only on public library computers that children must use.
d. on no public library computers at any time.

Divide the class into small groups. Each group will role play the city council. Each council should fully discuss the various proposals and their pros and cons. Then each council should vote on which proposal to adopt. Finally, each council should report back. Then the class should take a vote on the filtering choices to see which one the majority would like to see implemented in the local public library.

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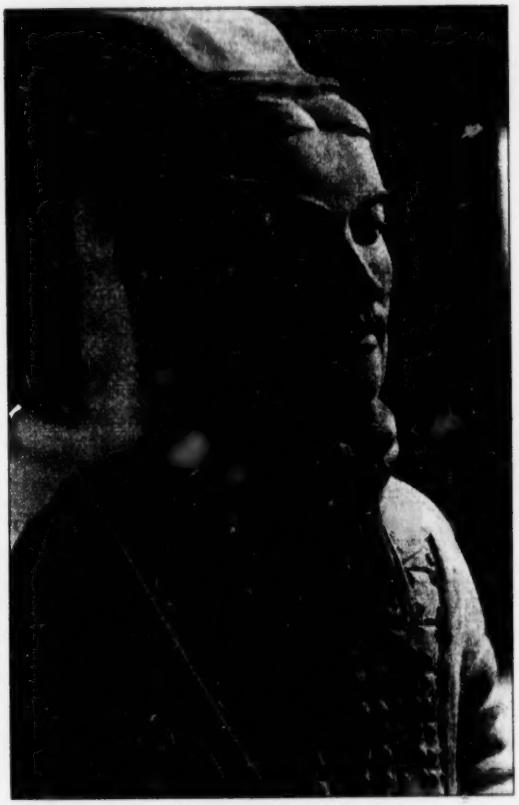
The Law of Shi Huangdi, First Emperor of China

Like Alexander the Great and Julius Caesar, Shi Huangdi conquered vast areas and unified diverse peoples under one rule. After becoming the first emperor of what is now China, he attempted to suppress the traditional Confucian way of governing by imposing a harsh legal system.

In 1974, near the city of Xian, Chinese archeologists unearthed almost 8,000 full-sized clay statues of warriors, horses, and chariots. Each clay warrior bore unique facial features along with a distinct hairstyle and armor showing his military rank. The archeologists found the clay army buried on the approach to the still-unopened tomb of China's first emperor, Shi Huangdi, who died more than 2,000 years ago. Before his death, the emperor had ordered 700,000 workers to labor on his tomb. His ability to command many people to work on such projects flowed from his success as a military mastermind. But he also established a severe legal code that conflicted with traditional Chinese ideals.



Hundreds of full-size statues, like this terra-cotta warrior, stand guard at the tomb of the first emperor of China, Shi Huangdi. (CORBIS/John Slater)

WORLD HISTORY

The Unification of China

For more than 250 years before the first emperor, war raged throughout China. Starting in 481 B.C., the seven major kingdoms making up what is now most of China constantly fought one another. This is known in Chinese history as the Period of Warring States. Gradually, the Kingdom of Qin, in the north, took advantage of its superior cavalry to form a fearsome war machine. Led by a series of gifted leaders, Qin won 15 major wars from 374–234 B.C.

Near the end of this violent time, an ambitious rich merchant, Lu Buwei, sought the favor of Zizhu, the crown prince of Qin. In 259 B.C., Lu Buwei presented one of his mistresses to the prince. Later, this woman gave birth to a child, named Cheng, who eventually would become the first emperor of China. Tradition has it that the merchant Lu Buwei, not Crown Prince Zizhu, actually fathered the child. In any case, when Cheng was 10-years-old, Zizhu became king of Qin and made Lu Buwei his chief adviser.

Zizhu died after only three years on the throne. Cheng succeeded him. But since Cheng was only 13 years old, his mother and Lu Buwei governed in his name until he reached adulthood.

When Cheng turned 21 in 238 B.C., he assumed full powers as king. But his mother and her lover conspired (possibly with Lu Buwei) to overthrow his rule. King Cheng acted quickly to crush the conspiracy. He temporarily banished his mother from the Qin capital, decapitated her lover, and removed Lu Buwei from his high office.

He also ordered all foreigners expelled from Qin. But a brilliant government official, Li Si, persuaded him to cancel the order. Li Si, himself a foreigner, convinced Cheng that many valuable people would end up serving the enemies of Qin if forced to leave. Li Si so impressed Cheng that the king promoted him to minister of justice in place of Lu Buwei.

Pronunciation Guide

Han Fei-tzu [han fay tzz]
Li Si [lee sz]
Lu Buwei [loo boo way]
Qin [cheen]
Shi Huangdi [sure hwong dee]
Xian [shee an]
Xianyang [shean yong]
Zizhu [gee joo]

(Continued on next page)

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King Cheng decided to undertake something never before accomplished by any ruler in the land: the conquest of all the other kingdoms and unification of them under one rule. He followed Li Si's plan to use spies and bribery to prevent a grand alliance of the other six kingdoms against him. At the same time, he created an unstoppable army that included up to 600,000 fighting men, most of them conscripted (drafted) peasants.

Cheng did not actually lead his troops into battle, but was a master military strategist. He also appointed his generals based on ability rather than family name. The young king used his mobile cavalry and lightly armored foot soldiers to outmaneuver the enemy's bulky war chariots. Cheng's warriors used the most advanced weapons including bronze swords, spears, and dagger-axes along with longbows and crossbows.

Portrait of Confucius, the Chinese philosopher whose teachings the first emperor rejected. Confucius believed that a ruler should lead with compassion, not force. (CORBIS/Bettman)

Beginning in 230 B.C., Cheng embarked on his campaign of conquest. In less than a decade, he had conquered and annexed all six enemy kingdoms. In 221 B.C., he proclaimed himself "Qin Shi Huangdi," which means the first great emperor of China.

"All under Heaven"

An ancient chronicle of Chinese history records that after the last of the six kingdoms fell, "Qin now possessed All under Heaven." For the first time, China was unified under one ruler. Shi Huangdi himself declared that his dynasty would endure "for generations without end."

Unlike most leaders before him in China, Shi Huangdi favored the new and innovative while rejecting many past traditions. Li Si, appointed as the first emperor's grand counselor, shared this view.

Acting on Li Si's advice, Shi Huangdi abolished the old feudal system, which had distributed most lands to powerful lords. Li Si organized China into 36 districts governed by officials appointed by the first emperor. To further his grasp of power and control, Shi Huangdi ordered all the royal families of the vanquished kingdoms to move to his capital city of Xianyang. There he could keep watch over them.

During the next few years, the first emperor and Li Si brought about many changes in China. They standardized writing, coins, and weights and measures. They created a network of tree-lined highways covering more miles than the Roman road system would a few hundred years later. They built palaces, canals, irrigation systems, and Shi Huangdi's own tomb complex. The first emperor also ordered the extension and new construction of earthen defensive walls in the north to keep out barbarian invaders. This Great Wall of China ran 2,600 miles across northern China to the sea. (Almost 1,500 years later, it was reconstructed with stone during the Ming dynasty.)

To support his massive projects, the first emperor created a tax system that burdened everyone, especially the common people. The emperor's land tax took up to 50 percent of a family's yearly grain production. Even more oppressive, however, was conscription. In addition to military conscription, all males from 15 to 60 years of age had to work for fixed periods on local public works, such as building roads and repairing dikes. Those convicted of crimes or who could not pay their taxes were often transported faraway to labor on the emperor's projects like the Great Wall. With many peasants away from the fields working on the emperor's projects, their crops frequently failed. According to one scholar at that time, the poor often "ate the food of dogs and swine."

The Law of Shi Huangdi

Before Shi Huangdi became emperor, Qin's rulers followed the teachings of the philosopher Confucius (551–479 B.C.). Confucius believed in a well-ordered society tied to tradition and the past. He also valued learning and scholarship. In his view, the state resembled a large family guided by the righteous behavior of the ruler. The ideal leader ruled by compassion, not force, and avoided war while easing the burdens of the poor. According to Confucius, a ruler who failed to set the example of goodness for his sub-

jects would lose the "Mandate of Heaven," and his reign would end in disaster.

Shi Huangdi, however, preferred another school of thought called Legalism. The Legalists believed that people were basically motivated by self-interest and therefore had to be controlled by a strong ruler and stern punishments. Han Fei-tzu, a Legalist and the tutor of Shi Huangdi, wrote, "The ruler alone should possess the power, wielding it like lightning or like thunder."

Li Si, the first emperor's grand counselor, was also a Legalist. He created a law code to govern the newly unified China. Under the Qin Law Code, district officials, all appointed by the emperor, investigated crimes, arrested suspects, and acted as judges. When arrested, criminal suspects were often beaten to get a confession. Those arrested were presumed guilty until they could prove their innocence. Trials took place before a judge with no jury or lawyers.

Although the harsh punishments were supposed to deter lawbreaking, many people ran afoul of the law.

The Qin Law Code set specified harsh punishments for particular crimes. Penalties for less serious violations included fines, beatings with a stick, hard labor on public works, and banishment to frontier regions. For more serious offenses, lawbreakers faced bodily mutilation by tattooing the face, flogging, cutting off the nose, amputating one or both feet, and castration. The death penalty was reserved for the worst criminals, especially those who threatened the emperor or the state. Execution was normally by beheading. But in some cases, the criminal could be cut in two at the waist, boiled in a cauldron, or torn apart by horse-drawn chariots.

Although the harsh punishments were supposed to deter lawbreaking, many people ran afoul of the law. The Qin Law Code covered so many offenses that common people frequently did not realize they had committed a crime until they had been arrested. Also, the code reflected the Legalist theory of group responsibility. All members of a family faced punishment when one member violated the law. Under Shi Huangdi's law, increasing numbers of people wore the red clothes of a convict.

The Fall of the Qin Dynasty

In 213 B.C., eight years after becoming emperor, Shi Huangdi held an assembly of scholars to debate the future of the empire. During this debate, one scholar brazenly called for a return to traditional Confucian teachings and a restoration of the feudal system. This so enraged Li Si, the emperor's chief adviser, that he made this radical proposal to Shi Huangdi:

> These scholars learn only from the old, not from the new, and employ their learning to oppose our rule and confuse the . . . people. . . . This lowers the prestige of the [emperor] and leads to the formation of factions below. It must be stopped. . . . Let all historical records but those of Qin be destroyed.

Sensing that he was losing control of the empire, Shi Huangdi agreed with Li Si. He ordered the burning of history books, the classics of Confucius, and the writings of other schools of thought. These "books" were actually writings on silk scrolls and rolls of wood and bamboo strips, since paper had not yet been invented. According to some accounts, after the book burning, Shi Huangdi ordered several hundred scholars executed or banished to work on the Great Wall.

During the next few years, Shi Huangdi grew increasingly isolated. He became obsessed with finding an elixir for immortality. He sent magicians to distant lands to find the elusive potion and toured the empire himself in search of it. On his last tour, he seemed to descend into madness on his quest for everlasting life. He apparently took concoctions containing mercury and other poisonous substances, which ironically probably shortened his life. In 210 B.C. at age 49, he died while still touring the empire.

The Qin dynasty did not last long after Shi Huangdi was buried in his elaborate tomb guarded by thousands of clay soldiers. Peasant revolts erupted followed by rebellions led by lords from the six kingdoms that Shi Huangdi had conquered. In 206 B.C. the last ruler of Qin surrendered to a rebel army and was beheaded. The rebels then burned Xianyang, the Qin capital.

(Continued on next page)

Although the Qin dynasty lasted only a short time, China remained unified under one emperor until the 20th century. Later dynasties merged the first emperor's severe Legalist law code with Confucian thinking to provide a more humane system of justice for China. Shi Huangdi may never have found the elixir for immortality, but his ideas and accomplishments influenced Chinese civilization for many hundreds of years.

For Discussion and Writing

1. What major differences do you see between the Confucian and Legalist ways of governing?
2. What elements of Shi Huangdi's law differ from American justice?
3. Why do you think the Qin Dynasty collapsed so quickly after the death of the first emperor?

For Further Reading

Guisso, R.W.L.; Pagani, Catherine; and Miller, David. *The First Emperor of China.* New York: Birch Lane Press, 1989.

Twitchett, Denis and Loewe, Michael, eds. *The Cambridge History of China, Volume I, The Ch'in and Han Empires, 221 B.C.–A. D. 220.* Cambridge: Cambridge University Press, 1986.

ACTIVITY

Book Burning and Censorship

Form small groups to discuss the following questions. Each group should then report its discussion results to the rest of the class.

1. In 213 B.C., Shi Huangdi ordered the burning of books that he believed were dangerous. Imagine that you were a "time traveler" who could go back to ancient China and advise the first emperor. What arguments would you give him that book burning is a bad idea?
2. Time-traveling back to the United States today, do you think the government should have the power to censor materials it considers dangerous such as books, magazines, movies, music recordings, artwork, or software? Cite specific kinds of material that people may think merit censorship and explain your position on each.

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Laws of the Indies: Spain and the Native Peoples of the New World

Columbus not only claimed the New World for Spain, but also found people already living there. For the next century, Spanish conquistadors, missionaries, scholars, and lawmakers debated how to treat the people of the New World.

An artist's rendition of one of Columbus' first meetings with native people. (CORBIS/Historical Picture)

When Columbus came back from his first voyage to America (which he called the Indies), he brought with him some Indians to display to Spain's monarchs, Ferdinand and Isabella. The Native Americans caused great curiosity and wonderment at the Spanish royal court. Columbus shortly returned to America and to show the potential economic value of the Indians, sent a shipload of them to Spain to be sold as slaves.

In 1495, the crown ordered the money from the sale of the Indian slaves to be set aside until certain troubling questions could be answered: Did Spain have "just title" over the Indies? Could Spain legitimately make war on the native peoples and thereby enslave or otherwise force them to work? Did the Indians have the capacity to accept Christianity and to live like Spaniards? Were the Indians even human beings?

The questions dominated Spanish colonial policy and lawmaking for most of the next century. They caused a massive collection of royal decrees, ordinances, and law codes that together made up the "Laws of the Indies." Although many laws concerning the Indians proved to be humane and even enlightened, the Spaniards in the New World often ignored them in their greedy quest for gold.

God and Greed

The question of the "just title" to the Indies was seemingly settled in 1493. Pope Alexander VI issued a declaration passing legal possession of the newly discovered lands to Spain. The pope, however, made this "donation" to Spain for the purpose of converting the native peoples to a belief in God and the Catholic faith. Whether Spain could also legally take Indian lands and possessions by force became a disputed matter among Spanish scholars for many years. Of course, the Indians had no say in any of this.

Over the next decade, Ferdinand and Isabella issued royal orders to Spanish officials in Hispaniola, Spain's first colony in the New World, on how to treat the native peoples. Missionaries were to introduce the natives to Christianity, and the governor of the colony was supposed "to make certain that the Indians are well treated." In return, Ferdinand and Isabella expected the Indians to pay them tribute in gold or goods. Furthermore, the Spanish monarchs directed their officials to "compel" the Indians to work for wages to prevent "idleness."

In America, events took their own course. The Spanish conquistadors, who went to Hispaniola and then to other Caribbean islands and finally to the mainland, were rough and violent. They took what they wanted, and when the Indians resisted—or even when they did not—the conquistadors attacked and slaughtered them. By 1499, Columbus was rewarding his men for helping conquer the Indies by forcing Indians to work for them.

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This prompted Queen Isabella to ask, "By what authority does the Admiral give my vassals [subjects] away?"

Within a few years, however, the crown authorized this practice, called the *encomienda* system. Instead of being a grant of land, the *encomienda* was a grant of people. Typically, an *encomienda* included an entire village, up to several hundred men, women, and children. Their Spanish masters could force them to mine gold, cultivate crops, or carry goods like beasts of burden. The masters were supposed to pay the Indians, but the law only obligated them to give Indians minimal clothing and food rations. During the first decades of the Spanish occupation of the New World, hundreds of thousands of native peoples died. Some perished from starvation, others from diseases brought from the Old World, and some were simply worked to death.

The Laws of Burgos

In 1511, Antonio de Montesinos, a Dominican missionary in Hispaniola, delivered a sermon that shocked and angered his Spanish listeners. Montesinos condemned their cruel treatment of the Indian people. "You kill them with your desire to extract and acquire gold every day," he said. He then asked, "Are these not men? Have they not rational souls?" This marked the first open protest against the mistreatment of native peoples in America.

> *Las Casas contended that the Indians were free, rational human beings whom he compared favorably to the Egyptians, Greeks, Romans, and even the Spanish themselves.*

The year after his revolutionary sermon, Montesinos traveled to Spain to take his grievances directly to King Ferdinand. (Isabella had died in 1504). The king listened sympathetically and ordered Spanish scholars to prepare a code of laws regulating the treatment of Indians. Drawn up in 1512 and 1513 in the city of Burgos, Spain, the Laws of Burgos became the first code of laws written by Europeans for the New World.

The Laws of Burgos were remarkably enlightened for the time. Although this law code continued to recognize the *encomienda* system, its 39 articles laid down specific rules to prevent abuse of Indian workers. For example, it forbid using Indians as carriers of goods in place of pack animals. It granted 40 days of rest to *encomienda* Indians who had mined gold for five months. It prohibited Indian children under 14 and pregnant women from doing heavy work in the mines or fields. It banned Spanish masters from beating, whipping, or calling any Indian "dog." Moreover, the code required that the Catholic faith "shall be planted and deeply rooted so that the souls of the said Indians may be saved."

In spite of the good intentions of the Burgos code, most of its laws were not enforced. After all, Spain and King Ferdinand were a long way from America.

Defender of the Indians

In 1524, the king of Spain, now Charles V, established the Council of the Indies. This powerful body held primary authority under the king concerning the Indies. The council wrote laws, acted as a court of appeal in some cases, decided which books about the Indies could be published, approved matters relating to religion, regulated commerce, and directed the administration of colonial governments in America. The council also heard complaints about the continued mistreatment of the Indian population.

Bartolome de Las Casas was the most persistent defender of the Indians during the early years of the Spanish conquest of America. Starting out as a conquistador with his own *encomienda*, Las Casas later became a Dominican friar who passionately spoke out against the brutal treatment of the Indians.

In several books and in speeches before the Council of the Indies, Las Casas described in graphic detail how the Spanish moved into an unconquered territory and terrorized Indian people. In one technique, Spanish soldiers rounded up Indian leaders, hanged them in groups with their feet barely touching the ground, and then burned them alive. In another, soldiers let loose large, vicious dogs to attack, tear apart, and then eat the Indians. "Nor did this cruelty take pity on [pregnant] women," wrote Las Casas, "whose bellies they ripped up taking out the infants to hew them to pieces."

Las Casas went on and on cataloging the tortures employed by the conquistadors—throwing Indians into pits with sharpened stakes, spearing them from

horseback as they tried to escape, grilling children over a fire. The Dominican friar finally charged that after the survivors had been enslaved or forced into *encomiendas*, their Spanish masters started "killing them slowly with hard labor."

In 1542, due to the constant protests of Las Casas and others, the Council of the Indies wrote and King Charles V enacted the New Laws of the Indies for the Good Treatment and Preservation of the Indians. The New Laws abolished Indian slavery and also ended the *encomienda* system. After the current *encomienda* masters died, their Indians would become vassals of the crown. They would then owe the king tribute in goods, but not in labor.

Once a conquistador, Bartolome de Las Casas became one of the fiercest defenders of the Indian people. (CORBIS)

The new *encomienda* law produced tremendous opposition in America. *Encomienda* holders argued that not only they but the entire Spanish colonizing effort would fail without forced Indian labor. The viceroy of New Spain (Mexico) suspended enforcement of the new *encomienda* law because so many refused to accept it. In Peru, a violent revolt resulted in the beheading of the viceroy there.

Finally in 1545, Charles V backed down and revoked the offending law. This allowed masters to pass on *encomienda* Indians to their heirs. The *encomiendas* thus continued for a while, but eventually disappeared as the Indian population declined sharply because of forced labor, disease, and intermarriage with Spaniards. The Laws of the Indies considered the children of these mixed marriages free and outside the *encomienda* system.

The Great Debate

Even though he was on the losing side in the fight to abolish *encomiendas*, Las Casas stubbornly pressed on with his Indian cause. Pope Paul III helped when he declared that Indians were human beings. Then in 1550 and 1551, Las Casas participated in a remarkable debate. Sponsored by the king himself, it questioned the entire Spanish colonization enterprise in the New World.

The great debate took place at Valladolid, Spain, before a special group of scholars and royal officials. They were to decide whether the conquest of the native peoples in the New World was morally justified. A brilliant religious scholar, Juan Gines de Sepulveda, argued that the Indians were barbaric and "slaves by nature." If "those little men in whom one can scarcely find any remnants of humanity" resisted Spanish rule, Sepulveda reasoned, war was justified.

Las Casas contended that the Indians were free, rational human beings whom he compared favorably to the Egyptians, Greeks, Romans, and even the Spanish themselves. "All the peoples of the world are men," he said, and thus possess basic natural rights. Therefore, it was wrong for the Spanish to force their rule and religion onto the Indians. Las Casas concluded that the conquest must stop, Spain must end its rule over native peoples, and religious conversion must take place peacefully and voluntarily.

The panel of scholars never declared a winner in the debate, although both Sepulveda and Las Casas claimed victory. The conquest continued, but the ideas that Las Casas presented during the great debate influenced the development of the Laws of the Indies and the rights of Indian peoples over the next 300 years.

For Discussion and Writing

1. What were the "Laws of the Indies"? How effective were they?
2. What was the *encomienda* system? How did the conquistadors justify it? How did Las Casas and other critics condemn it?

(Continued on next page)

3. How would you have decided the great debate on the conquest of the Indians? Give reasons for your decision.

For Further Reading

Gibson, Charles, ed. *The Spanish Tradition in America.* Columbia, S.C.: University of South Carolina Press, 1968.

Las Casas, Bartolome de. *A Short Account of the Destruction of the Indies.* New York: Penguin Books, 1992 [originally published in 1552].

ACTIVITY

Laws for the Indies

The Council of the Indies considered at one time all the proposed laws for the Indies listed below. Divide the class into the following role groups for a simulated Council of the Indies lawmaking session:

1. **Conquistadors:** Soldiers and *encomienda* masters who conquered the New World for Spain
2. **Viceroys:** The king's representatives in the New World. Each heads the government of a Spanish colony.
3. **Missionaries:** Members of religious orders who want to convert the Indians to Christianity
4. **Indian Defenders:** People like Las Casas who protest the mistreatment of Indians and defend their human rights
5. **Council of the Indies:** The lawmaking body for the Indies

The first four role groups should prepare a position with arguments on each of the proposed laws while the last group (the council) develops questions to ask. Each group will then present its position on the first proposed law before the Council of the Indies. The council may ask questions of each group after it has finished. The council will then discuss and decide whether to approve, disapprove, or modify the proposed law. The same procedure should be followed in considering the other proposed laws.

Proposed Laws

1. Indians shall not be permitted to go without clothing, worship idols, or make human sacrifices.
2. Sons of Indian leaders will be instructed in reading, writing, and the Catholic faith at the expense of their *encomienda* masters.
3. The *encomienda* system will be phased out. When a current *encomienda* master dies, his Indians shall become vassals of the crown.
4. Books by Juan Gines de Sepulveda shall not be printed or distributed in the Indies.

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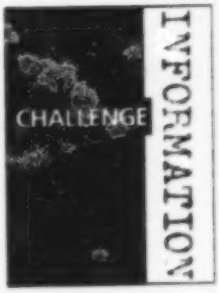

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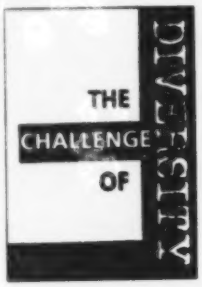

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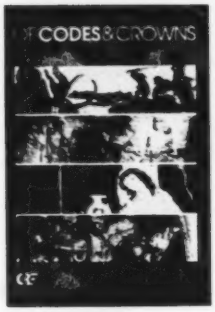

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- **Hammurabi's Treasures** explores the concept of ***lex talionis***, the law of retribution, and an ancient set of laws—the Code of Hammurabi.
- **Blood Feud** discusses the Greek tribunal system and the story of Orestes. Students convene their own tribunal to settle a school dispute.
- **Merry Old England** examines the evolution of the jury system. Students role play a medieval English court trial of a suspected arsonist.
- **Renaissance Italy** explores the limits of authority through the story of Galileo's dispute with church officials. Students debate a modern censorship case.

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EVENTS

CRF and CRF-Chicago To Team Up at 1999 NCSS Conference

ORLANDO, FL—The Los Angeles and Chicago offices of Constitutional Rights Foundation have been invited to conduct 10 presentations at the **79th National Council for the Social Studies Annual Conference**. The conference is scheduled for November 19-21 at the Orange County Convention Center, Orlando, Florida. Organizers of this year's NCSS Conference have asked presenters to address the theme **Defining the Common Good: a challenge for the 21st century**.

Special Pre-Conference Clinic and NSSSA Presentations

CRF Executive Director Todd Clark will chair a special presentation titled **"Civic Education: Practical Strategies for the 21st Century."** Slated for a Thursday pre-conference slot, this three-hour clinic will survey the field of civic education and discuss new approaches designed to engage students in the study of local government.

Joined by Carolyn Pereira, Executive Director of CRF Chicago and others, Clark will discuss the results of the NAEP Civics Test, present recent information on the presence of civic education in American schools, and review current student attitudes toward politics and civic education. In addition, "Civic Education" will model five exciting new programs that focus on local government and actively involve young people in their communities.

CRF-Chicago will host a pre-conference presentation titled **"Leading Productive Classroom Discussions."** Led by Carolyn Pereira, CRF Chicago's Executive Director, this interactive session will use CRF's new publication, ***The Challenge of Diversity*** to model classroom discussion methods.

In addition to these Pre-Conference sessions, writers, program directors, and other trained staff members from CRF's Los Angeles and Chicago offices will conduct a wide variety of interactive sessions on CRF materials and programs. (See the schedule on next page.)

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ABOUT CRF

Constitutional Rights Foundation is a non-profit, non-partisan citizenship education organization with programs and publications on law, government, civic participation, and service learning. Since 1962, CRF has used education to address some of America's most serious youth-related problems: apathy, alienation, and lack of commitment to the values essential to our democratic way of life.

Through a variety of civic-education programs developed by CRF staff, young people prepare for effective citizenship and learn the vital role they can play in our society. Empowered with knowledge and skills, our youth can interact successfully with our political, legal, and economic systems. CRF is dedicated to assuring our country's future by investing in our youth today.

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CRF's THURSDAY PRE-CONFERENCE CLINIC

9:00 am–1:00 pm	**Civic Education: Practical Strategies for the 21st Century Classroom**	Location to be announced

CRF's THURSDAY PRE-CONFERENCE PRESENTATION AT NSSSA

9:30 am-noon	**Leading Productive Classroom Discussions**	Clarion, Salon 18

CRF's FRIDAY SESSIONS AT NCSS

9:30 am–11:30 am	**The Grand Jury: Friend or Foe of the People**	Convention Center, Room 205A
2:30 pm–3:25 pm	**The Challenge of Diversity**	Convention Center, Room 310B
2:30 pm–4:40 pm	**Should Students' Participation in Classroom Discussions Be Graded?**	Omni, Salon 10
4:50 pm–5:45 pm	**CityWorks: An Exciting Way to Teach Local Government**	Convention Center, Room 311F
4:50 pm–5:45 pm	**Gangs and the Constitution: 'The City of Chicago v. Morales'**	Omni, Salon 17

CRF's SATURDAY SESSIONS AT NCSS

2:30 pm–3:25 pm	**Teaching About Congress: Do Students Really Despise the Nation's Legislators?**	Convention Center, Room 307 C
4:55 pm–5:50 pm	**The Challenge of Information**	Clarion, Salon 9

CRF's SUNDAY SESSIONS AT NCSS

1:05 pm–2:00 pm	**The Challenge of Violence**	Omni, Salon 22

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